

## **Land Concessions, Land Tenure, and Livelihood Change: Plantation Development in Attapeu Province, Southern Laos**



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## Abbreviations

Asian Development Bank	ADB
Association of Southeast Asian Nations	ASEAN
Chief Executive Officer	CEO
Department of Forestry	DOF
Department of Planning and Investment	DPI
District Agriculture and Forestry Office	DAFO
Environmental and Social Impact Assessment	ESIA
Geographic Information System	GIS
Geographic Positioning System	GPS
Gesellschaft für Technische Zusammenarbeit (German Technical Cooperation)	GTZ
Hoàng Anh Gia Lai Joint Stock Company	HAGL
Ho Chi Minh City	HCMC
Ho Chi Minh Stock Exchange	HoSE
International Fund for Agricultural Development	IFAD
International Non-Governmental Organization	INGO
International Union for the Conservation of Nature	IUCN
Lao National Sports Committee	LNSC
Lao People's Democratic Republic	Lao PDR
Memorandum of Understanding	MOU
Ministry of Agriculture and Forestry	MAF
Ministry of Planning and Investment	MPI
National Land Management Authority	NLMA
National Biodiversity Conservation Area	NBCA
Non-Profit Association	NPA
Provincial Agriculture and Forestry Office	PAFO
Provincial Land Management Authority	PLMA
Rural Development in Mountainous Areas	RDMA
Southeast Asian Games	SEA
Unexploded Ordnance	UXO
Vientiane Times	VT
Water Resources and Environment Administration	WREA
World Wide Fund for Nature	WWF

## Exchange rates

\$1 = 8,470 kip<sup>1</sup>

\$1 = 33.2 baht<sup>2</sup>

\$1 = 86.6 yen<sup>2</sup>

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<sup>1</sup> As reported in the Vientiane Times, 01 February 2010.

<sup>2</sup> Historic exchange data for 01 December 2009. The United States Federal Reserve.  
<<http://www.federalreserve.gov/>>.

## Glossary of Lao Language Terms

<u>Transliteration:</u>	<u>ພາສາລາວ:</u>	<u>English:</u>
<i>achan</i>	ອາຈານ	professor, teacher with a degree
<i>pa pong kanh</i>	ປ່າປ້ອງກັນ	protection forest
<i>pa dong dip</i>	ປ່າດົງດິບ	green, deep forest
<i>pa khok</i>	ປ່າໂຄກ	dry dipterocarp forest, stony forest
<i>pa phalit</i>	ປ່າຜະລິດ	production forest
<i>pa sa ngouan</i>	ປ່າສະຫງວນ	conservation forest
<i>pa som say</i>	ປ່າຊົມໃຊ້	using forest
<i>ban</i>	ບ້ານ	village
<i>beung</i>	ບຶງ	marsh, wetland
<i>bot banh teukh khwam khao chai</i>	ບົດບັນທຶກຄວາມເຂົ້າໃຈ	memorandum of understanding (MOU)
<i>din chap chong</i>	ດິນຈັບຈອງ	booked/settled land
<i>din liang sat</i>	ດິນລຽງສັດ	grazing land
<i>din na</i>	ດິນນາ	wet-rice, paddy land
<i>din souan</i>	ດິນສວນ	garden land
<i>mope din mope pa</i>	ມອບດິນ-ມອບປ່າ	land and forest allocation (LFA)
<i>kan sampathan thi din</i>	ການສຳປະທານທີ່ດິນ	land concession
<i>koum</i>	ກຸ່ມ	group, subcategory of a larger village
<i>hong nai ban</i>	ຮອງນາຍບ້ານ	deputy head of the village
<i>nai ban</i>	ນາຍບ້ານ	head of the village
<i>nam</i>	ນ້ຳ	river, water
<i>nya kha</i>	ຫຍ້າຄາ	cogongrass ( <i>Imperata cylindrica</i> )

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<sup>3</sup> In Lao, a professor or teacher with a degree.

<sup>4</sup> In Lao, village. At times shortened to "B." throughout the paper.

## Executive Summary

This paper seeks to add to the growing literature on land concessions by examining a recent, high-level concession as a means of understanding three aspects related to concessionary investments: (1) the process by which concessions are awarded and implemented; (2) the intricate relationship between land use, land tenure, and land ownership in the face of concessions; and (3) the way in which village and household livelihoods are impacted due to such massive land use and ownership changes.

The case study at hand is the concession of land use rights to log timber and grow rubber on a 10,000 hectare (ha) plot of land for 35 years in Attapeu province, southern Laos. These rights were awarded to the Hoàng Anh Gia Lai (HAGL) Joint Stock Company, a multinational Vietnamese corporation with diversified business activities including rubber growth and processing, mining, hydropower, real estate, and sports franchises. HAGL was able to acquire such a large tract of land in part because of aid they provided to the Lao government to construct the Southeast Asian (SEA) Games athletes' village. The connection between the athletes' village and the concession is little known and thus the report aims to highlight the way in which the SEA Games, in addition to being a sporting event, is also a project of national development with political, economic, and social implications.

At the time of fieldwork, only 8,078 ha of the 10,000 had been allocated to the company in three separate, but nearby fields. Out of this area, 65% has been cleared already, of which 61% has already been planted with rubber. The land of seven villages in the area had been conceded to the plantation and out of these seven villages, six previously relied on such land for their livelihoods. Therefore, the livelihoods of 1,291 households and 7,331 people have been impacted.

Due to the high-level and high-priority nature of the investment, the Attapeu provincial government was influenced by the central government to facilitate the implementation of the project rapidly. This meant that a comprehensive land survey was not conducted until most of the land had been cleared. Additionally, an Environmental and Social Impact Assessment (ESIA) was not conducted before the project began and only after land had been cleared was a minimal assessment of social and environmental impacts conducted. Such rapid implementation partly explains why prohibited forest types as well as privately tenured agricultural lands were conceded to the company.

When negotiating the concession at the village and household levels, a number of coercive strategies were used to ensure the concession of land by the heads of villages and households. In many cases, the company began to clear village and household land without any warning beforehand. At other times the village or household was notified in advance that land within their village would be appropriated, yet they felt powerless to do anything about it. Additionally, the project was presented as a positive development for the village due to the improved infrastructure and consistent employment it would bring. For the households that were consulted beforehand, their choice was not whether they were willing to give up their land but if they wanted to receive compensation for the land they would lose.

At both the village and household level there were cases of resistance to the conceding of land. The two households that resisted giving up individual agricultural plots did so in response to both the low rate of compensation they were offered and the inconsiderate way in which their land was taken. At the village level, one village initially accepted the conceding

of village land, but when the company later asked for an additional plot of land, the *nai ban*<sup>5</sup> was fed up with the project and refused. Another village was the only one to resist the concession from the beginning and because they did so immediately and resolutely, they were able to successfully prevent their land from being cleared.

The loss and compensation of different land types with varying degrees of legal tenure can provide insight into the *de facto* system of land tenure, land use, and land ownership in Laos. Both communally used forest land and individually tenured agricultural land were conceded to the plantation. However, communal lands that were previously allocated to the village for use were not compensated because the village did not have legal tenure over such lands. Individual agricultural land was compensated because households had land titles to such land. However, compensation rates were far below the necessary amount for households to buy new land of the same size and quality. Additionally, the compensation process was completely unregulated by the government and compensation guidelines were not followed. The process solely consisted of a negotiation over the compensation rate between company representatives and heads of households, which was disadvantageous to the household due to the vast difference in bargaining power.

Household livelihoods in the focus villages were largely land-dependent and the three most important activities of income generation and food security were agricultural production, forest product collection, and animal grazing. Land types supporting these three activities have all been lost to the plantation and thus household livelihoods have been impacted in terms of a loss of income and food security. According to provincial government data, at least 115 households from the six impacted villages have lost agricultural land. However, since the plantation has not been fully implemented more households are likely to lose their land.

Villagers now have the opportunity to work on the rubber plantation, yet almost all of the interviewed households complained about such employment because of its difficult nature, low pay, and payment problems. They only work for the company when absolutely necessary, which is usually two to three times per year. This may reflect their lack of desire to work under the supervision and control of an employer, especially on land that they used to cultivate or utilize independently.

There are a number of approaches that can be taken in order to prevent the worst of land concessions from being implemented, to reduce their negative social impacts, and to mitigate or compensate for such impacts when they do occur. The first is to create a set of concession guidelines that is integrated with land use zoning practices in order to ensure that concessions are only granted on land types that villagers do not depend on for their livelihoods. The second is to increase land tenure security, both over land that villagers already tenure and also land that they do not yet legally tenure, such as communal forest land. The third is to set up farmer awareness campaigns that help villagers to learn about their legal rights as well as the positive and negative impacts that concessionary development can have upon their livelihoods. The fourth and final recommendation is to improve the mitigation strategies of negative social impacts when they occur. Most important, this should be done by increasing compensation rates, regulating the compensation process, and compensating for resources in communal lands that are not legally tenured.

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<sup>5</sup> In Lao, head of the village

## 1. Introduction: Land Concessions in Question

On May 22<sup>nd</sup>, 2007, HAGL signed an initial investment contract with the Attapeu Department of Planning and Investment (DPI) acquiring the rights to grow rubber trees, seedlings, and cashew nuts in Attapeu province for a period of 30 years. The contract was modified the following year giving the company land use rights to log the timber from and grow rubber on a 10,000-ha plot of land for 35 years. Curiously, these rights were awarded during a two-year period between May 2007 and May 2009 when the Lao Prime Minister, Mr. Bouasone Bouphavanh, placed a moratorium on land concessions over 100 ha for industrial trees, perennial plants, and mining. The moratorium was an attempt to prevent the negative economic, social, and ecological impacts of concessions until such impacts could be prevented or at the least, minimized. In May 2009, the moratorium was repealed in a new decree that supposedly addressed the negative impacts of concessions, mostly by requiring government officials to conduct land surveys identifying the suitability of different land categories for concessionary investment<sup>6</sup>. One month later, though, the moratorium was re-instated for concessions over 1,000 ha after cabinet members learned of country-wide complaints concerning the impacts of concessions on livelihoods and their encroachment into National Biodiversity Conservation Areas (NBCA)<sup>7</sup>.

Frequent fluctuations of government policy and discourse can make it difficult to understand the current state of land concessions in Laos. Dwyer's 2007 review of land concession literature<sup>8</sup> provided a comprehensive overview of the issue. Since that time, though, and despite the moratorium, concessions have been granted as the primary form of investment in land-based resource extraction and development in Laos. Thus, there is a need for updated literature and news source reviews as well as new and original case studies to analyze the degree to which policy change has altered the concessions landscape. This study attempts to fulfill the latter gap. While the original intent was to examine household livelihood change in relation to land concessions, the focus has expanded to two other areas. One is the process by which concessions are granted and implemented at different stages and at different levels of administration. The other is how land concessions bring to light the *de facto* land tenure system in Laos, particularly the lack of tenure security.

This report is organized in sections as follows: (2) methodology; (3) connections between HAGL's investment and the 2009 Southeast Asian Games; (4) HAGL's growth and expansion into Laos; (5) description of the plantation's location, size, and previous land use; (6) process of project implementation; (7) land loss and compensation as a lens for examining land tenure insecurity; (8) livelihood changes resulting from plantation implementation; and (9) ways in which impacts of concessions can be prevented or mitigated in the future.

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<sup>6</sup> Vientiane Times (VT). 2009. Govt resumes land concessions. 16 June.

<sup>7</sup> --. 2009. Govt again suspends land concessions. 02 July.

<sup>8</sup> Dwyer, M. 2007. Turning Land Into Capital: A review of recent research on land concessions for investment in Lao PDR: Part 1 of 2 – Existing Literature. Vientiane: Land Issues Working Group.



## 2. Methods

This study was part of a ten-month Fulbright Grant to study land concessions in Laos, beginning in October 2009. The first two months were spent on background research, language study, and fieldwork preparation. In December, my research assistant and I traveled to Attapeu for a one week preliminary fieldwork trip to gather general data on concessions in the province. We returned in February for one month of fieldwork during which we interviewed government officials at provincial and district levels, company representatives, village leaders, and village households. We also acquired investment, land use, and demographic data as well as survey documents, investment contracts, and project maps. Additionally, we recorded GPS coordinates within villages, plantation fields, and other points of interest. This report was written between March and July 2010.

The methodology employed was mostly qualitative, using quantitative data to back up key findings. The primary method of data collection was semi-structured interviews. The HAGL concession was chosen due to its connection with the SEA Games, its large size, and its recent implementation. It was also of interest due to its partially implemented status, as its implementation and impacts could be observed in the midst of its progression. We interviewed the *nai ban*<sup>9</sup> of all seven impacted villages, yet focused on the three impacted villages of Saysettha district. We interviewed ten households at each of these three villages and conducted more extensive interviews with the village leadership and key village informants than in the other four. These three villages were chosen more for practical than methodological reasons. Due to the sensitivity of the issue we opted to interview villages before government officials and company representatives. Thus, we were not aware that more than three villages had been impacted until partway through the work.

Our selection of households was also not methodologically rigorous as the study was not intended to quantitatively or statistically analyze social impacts, but to gain a more meaningful understanding of how household livelihoods change in the face of such rapid land use change and ultimately land loss. Nevertheless, we attempted to focus on different categories of households, such as those that had lost individually tenured agricultural land and those that had solely lost access to common resources. We also aimed to interview households with varying levels of wealth, trying to understand how the concession has affected different classes within the village.

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<sup>9</sup> In Lao, head of the village

### 3. The 2009 Southeast Asian Games: Sports, Aid, and Land

From December 9<sup>th</sup> to 18<sup>th</sup>, 2009, the Lao government hosted the 25<sup>th</sup> SEA Games, a regional sporting event among ASEAN countries and East Timor. While this event was by no means on the same scale as global sporting events such as the Olympics or the World Cup, to Laos they represented an opportunity for the country to increase its presence on the world stage. Although the first SEA Games competition was held in 1959<sup>10</sup> and the games have been held biennially ever since, Laos never hosted the games until this year due to self-proclaimed financial difficulties. Even for Laos to host a smaller-scale, regional sporting event such as the SEA Games, it would require a degree of infrastructure and financing that the Lao government did not possess. When the decision was made for the games to be hosted in Vientiane a number of questions arose concerning how the games' infrastructure would be paid for, most importantly due to the lack of adequate sporting facilities in the capital. As with other development projects in the country, the government turned toward outside donors to seek the massive doses of financial aid necessary to transform and prepare the city to host the event. In this case, the country turned to its biggest investors, who were likely to be more interested in supporting a national sporting event in return for investment benefits.

The largest amount of aid came from China and Vietnam, with lesser amounts from South Korea, Japan, and Thailand. Despite being the largest investor in Laos at the time, Thailand gave the least amount of money, a total of 91m baht<sup>11</sup> (\$2,740,963<sup>12</sup>). 85m (\$2,560,241) went into the renovation of pre-existing sports facilities and the construction of a new multi-purpose gymnasium for muay (kick-boxing), basketball, and volleyball events. The other 6m (\$186,393) was used to train Lao athletes, referees, and officials from the Lao National Sports Committee (LNSC).

Japan gave the second-least amount by donating 400 million yen (\$4,618,937) to the LNSC for the construction of a new martial arts center<sup>13</sup>. The Lao-Japan Budo center was built to host karatedo and judo events, as well as table tennis and sepak takraw<sup>14</sup>. Korea outdid Japan with \$15.3m, although such money came from the Booyoung company, a private enterprise<sup>15</sup>. \$300,000 was donated to the LNSC for the construction of a taekwondo training center, while the other \$15m was invested into a 150-ha, 27-hole SEA Games golf course.

The largest amount of aid came from the Chinese government and led to perhaps the most well-known case of the type of trade-offs Laos has made in the name of development. Early on, the Lao government knew that the construction of a national stadium sports complex would be the largest necessary infrastructural investment for hosting the games. The old

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<sup>10</sup> The SEA Games were originally called the Southeast Asian Peninsular Games as they previously only included mainland Southeast Asian countries: Thailand, Burma (Myanmar), Malaya (Malaysia), Laos, South Vietnam, Cambodia, and Singapore. In 1977 the name was changed when Indonesia and the Philippines were included.

<sup>11</sup> VT. 2008. Thai government to renovate SEA Games venues. 03 September.

--. 2009. Multipurpose gymnasium ready for kick-boxers. 01 December.

<sup>12</sup> Throughout this paper, \$ refers to United States Dollars

<sup>13</sup> VT. 2008. Japan to construct martial arts centre. 11 December.

<sup>14</sup> Sepak takraw is a sport native to Southeast Asia resembling volleyball, the main difference being that the ball is hit over the net with the feet instead of the hands

<sup>15</sup> VT. 2008. SEA Games facilities make progress. 30 January.

--. 2009. Chairman tees off on SEA Games golf course. 29 October.

national stadium located in Chantabouly district of the city center was hardly big enough to host events such as the opening and closing ceremonies as well as the football matches. With this in mind, the Standing Deputy Prime Minister and Chairman of the Lao SEA Games Organizing Committee, Mr. Somsavat Lengsavad, actively sought out aid by asking the China Development Bank for the loan<sup>16</sup>. The \$100m loan was awarded on the condition that the Chinese company Suzhou Industrial Park Overseas Investment would be given a 50-year lease to develop 1,600 ha in the center of Vientiane into a “modern town” complete with business centers, hotels, factories, and tourism facilities<sup>17</sup>.

Despite the large impact that this deal would have upon Vientiane’s built environment, it was made in almost complete secrecy. Details of the project and its connection with the stadium only began to come out in response to rumors that had been circulating. The biggest rumor, which had to be specifically denied by Mr. Somsavat in a 2008 news conference, was that immigration laws would be relaxed in order to allow 50,000 Chinese families to move into the new development area<sup>18</sup>. While the migration of 50,000 new families into an urban population of 698,000 people<sup>19</sup> is a significant change, the numbers were not the biggest source of public discontent. More important was the sensitivity of the location. The 1,600 ha were chosen in the only plot of land that was both close to the city center and large enough for such a development: the 2,000-ha *Beung*<sup>20</sup> That Luang. *Beung* That Luang is one of the largest remaining wetlands in the Vientiane municipality<sup>21</sup> and provides a number of important ecological services for surrounding villages as well as the greater urban area<sup>22</sup>. Non-profit associations (NPAs)<sup>23</sup>, INGOs, and the development community at large were concerned with the highly negative social and environmental impacts of the project. The average Vientiane citizen, however, was more likely concerned with the cultural threat that a large, modern Chinatown in close proximity to *Pha That Luang*<sup>24</sup>, one of the most potent symbols of Lao nationalism. Residents on the perimeter of the wetland, however, were worried about losing their agricultural and residential land without being adequately compensated<sup>25</sup>. Additionally, even certain factions within the government, particularly the National Assembly, reportedly opposed the plan<sup>26</sup>.

Such a range of varying, but mutually reinforcing forms of resistance led the government to embark on a rare public relations campaign, eventually altering the terms of the agreement in order to appease the public. First, the development area was reduced to 200 ha with part of

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<sup>16</sup>Associated Press. 2008. ‘Chinatown’ stirs unusual rumblings about a small neighbor’s independence. 06 April.

<sup>17</sup>VT. 2007. That Luang marsh slated for development. 12 October.

<sup>18</sup>VT. 2008. Govt explains That Luang marsh development. 12 February.

<sup>19</sup>Results from the Population and Housing Census. 2005. Lao Department of Statistics. <<http://www.nsc.gov.la/>>.

<sup>20</sup>In Lao, a wetland or marsh

<sup>21</sup>In 1917, the wetland was 10,000 ha but it had decreased in size due to urban encroachment over the years. VT. 2008. Govt outlines plans for That Luang marsh development. 21 March.

<sup>22</sup>Gerrard, P. 2004. Integrating Wetland Ecosystem Values into Urban Planning: The Case of That Luang Marsh, IUCN and WWF. Vientiane, Lao PDR.

<sup>23</sup>NPAs are created and legally registered in Laos, while INGOs are designated as those from foreign countries.

<sup>24</sup>In Lao, The Great Stupa

<sup>25</sup>VT. 2008. Govt sets That Luang marsh compensation fees. 25 August.

<sup>26</sup>Jakarta Globe. 2009. As Laos Joins the Globalized World, the Price it Pays is Independence. 16 December.

the additional 1,400 ha to be moved to kilometer (km) 18<sup>27</sup> near the stadium complex and the other part to *Ban Dongphosy* near the Lao-Thai Friendship Bridge<sup>28</sup>. However, this amount was later increased to 600 ha without any explanation<sup>29</sup>. Although the future of *Beung That Luang* is uncertain, the story is an interesting one of the ways in which a relatively small degree of popular resistance can impact development projects in a restricted political environment.

At the same time that the controversy surrounding the financing of the national stadium was taking place, another development deal was quietly occurring. In April 2008, the Hoàng Anh Gia Lai Joint Stock Company from Vietnam signed a Memorandum of Understanding (MOU)<sup>30</sup> with the Lao government agreeing to finance the construction of a \$19 million athletes' village, as seen in *Photograph 1* below. In exchange, the company was given the rights to explore mineral potentials in Sekong and Attapeu provinces, to log the timber from and grow rubber on a 10,000 ha plot of land in Attapeu province, to construct two rubber processing factories in Attapeu, and to develop a property complex in Vientiane<sup>31</sup>. Despite such significant concessions of land use rights in connection with the SEA Games, this issue received little more attention than a few positive articles in the *Vientiane Times* (VT)<sup>32</sup>.



*Photograph 1: SEA Games athletes' village financed and built by HAGL*

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<sup>27</sup> Km 18 means that the location is 18 km away from the city center, a common system in Laos used to describe a location in relation to an urban area. Ironically, km 18 was the site originally chosen by the city of Vientiane for the development area but the company did not find it suitable because it was too far from the city center. Cf. VT. 2007. That Luang marsh slated for development. 12 October.

<sup>28</sup> VT. 2008. Govt scales down 'new town' project. 01 August.

<sup>29</sup> VT. 2008. Chinese development project to go ahead. 07 November.

<sup>30</sup> *bot banh teukh khwam khao chai*

<sup>31</sup> VietnamNet Bridge. 2008. HAGL built athletes' village in Laos. 15 July.

VN Business News. 2008. HAGL plans over \$100m for projects in Laos. 25 June.

<sup>32</sup> VT. 2008. Vietnamese company assists construction of dormitories. 25 June.

--. 2008. Vietnamese investment strengthens in Laos. 28 June.

--. Rubber company plants seeds of development in Attapeu. 21 April.

One of the reasons this exchange of aid for development rights was hardly noticed in comparison to the Chinese case was due to its lack of visibility. The land conceded to the Chinese developers was both close to the sports complex it was exchanged for as well as to a slice of the population that is more affluent, cosmopolitan, and politically empowered than the rest of the country. The Vietnamese deal, however, led to land rights in a rural and remote area which is out of sight and mind for most citizens of Vientiane and other urban areas. HAGL's land investment unfortunately did not have the luxury of being located within the sights of those with the means to say something about it and thus it never faced public scrutiny.

#### **4. Hoàng Anh Gia Lai: Growth, Expansion, and International Investment**

Before addressing the details of the HAGL concession, it is worth digging into the company's background, at least because of the company's large size, diverse business activities, and peculiar CEO, but also to better understand its approach to investment in Laos. Despite being the third largest corporation on the Ho Chi Minh Stock Exchange (HoSE) at the end of 2008<sup>33</sup>, Hoàng Anh Gia Lai began as a small carpentry business in Gia Lai province<sup>34</sup> of Vietnam's Central Highlands started by the CEO Mr. Đoàn Nguyên Đức. Mr. Đức, also known as Bàu<sup>35</sup> Đức or just Đức<sup>36</sup>, began his work by crafting wooden furniture products for local schools. His business quickly took off and he soon moved into the timber sector, at a time in the early 1990s when Vietnam was going through a period of rapid deforestation due to uncontrolled logging. Although a logging ban was later put into place by the Vietnamese government, the company continued to pull in up to \$10m per year from timber.

HAGL truly made its riches, though, when it moved into real estate. Bàu Đức began to acquire significant plots of land in Ho Chi Minh City around 2002 and 2003 to build high-end apartments and hotels at a time when land prices were low. Over the following years, the city's rapid urbanization increased the value of land ten-fold. At the same time, the company continued to expand its holdings in other provinces by constructing a chain of four- and five-star hotels in Dalat, Nha Trang, Gia Lai, Danang, and Qui Nhon<sup>37</sup>. By the end of 2009, 80% of the company's sales came from real estate and its stock had tripled since first being listed on HoSE in 2008<sup>38</sup>. At this point, the total assets of the company had passed \$1 billion, with Đức's shares at 55%. Although this meant Đức had yet to reach his goal of becoming Vietnam's first billionaire, he did become Vietnam's first private aircraft owner after purchasing a \$7m Beechcraft King Air 350 from the US in 2008<sup>39</sup>.

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<sup>33</sup> Than Nien News. 2009. Hoang Anh Gia Lai provides cautious profit guidance. 14 May.

<sup>34</sup> The latter half of the company's name, Hoàng Anh, is named after the CEO's daughter.

<sup>35</sup> In Vietnamese, big boss, especially in the show business. This refers to both his ownership of the company's football team, which is seen to be by the Vietnamese public as for the sake of entertainment.

<sup>36</sup> In Đức's case, his given name functions as his surname.

<sup>37</sup> HAGL Website. <<http://www.hagl.com.vn/index.php?l=en&m=caosu&cid=16&id=623>>.

<sup>38</sup> Forbes Asia. 2009. Condo Boss. 30 November.

<sup>39</sup> VN Business News. 2008. Chairman to be first Vietnamese private aircraft owner. 10 May. HAGL also owns a top Vietnamese football club, named after the company. Not only another personal ambition of Đức, the football team can also be used as a public relations arm of the company. This was certainly the case in 2002 when they offered enough money to convince the Thai football star Kiattisuk Senamuang to play for HAGL, especially after the Thai national team had beat Vietnam the year before. Cf.. Forbes Asia. 2009. Condo Boss. 30 November.

More recently, the company has turned its gaze towards natural resource extraction and development. The company's website asserts that by 2012 they expect rubber, mining, and hydro-power to make up the core business activities of the group. Domestically, HAGL has already moved into hydropower, mining, and milling. As of late 2009, the company had built two mid-size hydropower units in Vietnam with the rights to build four more. It had also finished the construction of a steel mill in Gia Lai province to process the iron ore from two of its mines in the area. The rapid success of its natural resource endeavors can already be evidenced by a 2010 deal to sell one million metric tons of iron ore to China in 2011<sup>40</sup>.

Increasingly, though, the company has set its sights on Vietnam's less-developed and more resource-rich neighbors, Cambodia and Laos, as well as further afield in Myanmar. These ought to be eyebrow-raising moves considering HAGL's CEO was quoted saying that "I think natural resources are limited, and I need to take them before they're gone"<sup>41</sup>. In Cambodia, the company has the rights to grow rubber on 15,000 ha and by August 2010 they will begin extracting iron ore from a \$20m-invested mine<sup>42</sup>. Laos, however, is intended to become the biggest destination of the company's international investment. The company's website states that HAGL has plans to invest a total of \$450m in Laos in the coming years<sup>43</sup>. \$100m will go into the construction of the "Vina Tower complex" in Vientiane, consisting of a five-star hotel, villas, and luxury apartments<sup>44</sup>. A larger portion, however, is going into the natural resource sector. Exploration is currently under way in Sekong and Attapeu provinces to develop mines for iron and copper ore. \$120m is being invested into two dams on the *Nam*<sup>45</sup> Kong in Attapeu, both of which are expected to be completed in the next two years with a combined electrical output capacity of 120 megawatts. Of all these projects, though, the rubber plantation is in the most advanced stage of implementation.

The company's keen investment interest in southern Lao provinces bordering Vietnam, especially Attapeu, has connections with the recently created Economic Development Triangle, a regional development plan set up by the governments of Cambodia, Laos, and Vietnam, which includes 10 provinces in the border areas of the three countries. Official discourse claims that this development scheme "not only promotes multi-faceted relations and mutual trust among the three countries but also contributes to peace, stability, and integration of the Mekong region and Asean"<sup>46</sup>. While perhaps true, it more importantly represents the institutionalization of a relationship that had already begun to develop between the three nations, whereby Vietnam provides investment and builds infrastructure while Laos and Cambodia concede land rights and natural resource entitlements. In this light, HAGL's investments in southeastern Laos and northeastern Cambodia wholly fulfill the ideals of the triangle.

Infrastructure building has already played an important role in HAGL's Lao investments. The company clearly understands how grant aid and low- or no-interest loans can quicken and

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<sup>40</sup> Bloomberg Businessweek. 2010. Hoang Anh Gia Lai Agrees to Sell Iron Ore to China. 03 March.

<sup>41</sup> Forbes Asia. 2009. Condo Boss. 30 November.

<sup>42</sup> Vietnam News Service (VNS). 2010. HAGL Chairman unveils regional expansion plans. 14 May.

<sup>43</sup> HAGL Website News. 2010. HAGL invests to build social works in Laos. 14 May.

<<http://www.hagl.com.vn/index.php?l=en&m=thongbao&cid=0&id=1242>>

<sup>44</sup> Vietnam News Service (VNS). 2010. HAGL Chairman unveils regional expansion plans. 14 May.

<sup>45</sup> In Lao, river or water

<sup>46</sup> VT. 2008. Japan to provide aid to Mekong nations. 18 January.

ensure the approval of large projects covering large areas. The company's commitment to provide \$30m in grant aid to Attapeu province demonstrates HAGL's long-term and expansionary plans for the province. Though this aid benefits Attapeu citizens, including those of the impacted villages, such infrastructure is also necessary for the company's projects. HAGL recently completed construction of a bridge crossing the Xesou River and they have plans to build roads to five of the impacted villages. The bridge, which connects Saysettha and Phouvong districts, is necessary for transportation to and from one of the fields. The building of roads serves the same purpose for two of the five villages. The company is also planning to construct electric lines through these five villages, one of which they have already completed. For two of these villages, electric lines are necessary for the company to provide energy to in-plantation housing settlements that are currently under construction (see *Photograph 2* below).



*Photograph 2: In-plantation housing settlements*

Additionally, the company has committed to building infrastructure at the village-level unrelated to its investment, such as health care centers, schools, and offices. Yet, they can also be viewed as forms of compensation for the losses that villages have endured. Furthermore, this form of compensation was required by the official investment contract stating that within seven years of the contract date the company must build \$80,000 worth of schools, \$40,000 worth of health stations, \$14,000 of electric systems including batteries and lines connecting to villager's houses, \$200,000 for improving countryside roads, and \$600,000 for the Xesou bridge<sup>47</sup>.

Whatever the individual motivations of each provision of aid, their overall purpose has been to provide the company with a comfortable investment climate, not only for this project but for its future investments in Attapeu and the rest of Laos. Such aid, in combination with the

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<sup>47</sup> 2008. Contract concerning the growth of rubber and construction of rubber processing factories in Attapeu province, Lao PDR between the Lao People's Democratic Republic and the Hoang Anh Gia Lai Joint Stock Company of the Socialist Republic of Vietnam (Investment Contract). Vientiane Capital, 11 December.



financial package the company provided to finance the SEA Games athlete's village<sup>48</sup> can also be seen as a strategy of reducing land rental costs. Provincial governmental officials informed us that the leasing rates had yet to be set. However, a company representative managing field operations told us that the \$15m the Lao government owed HAGL from the interest-free loan to build the athlete's village would be paid off through land rental at a cost of \$30 per ha per year. Thus, \$300,000 would be paid off each year and the loan would be fully paid off after 50 years. It is unclear how exactly what role timber extraction from the area plays in paying off the debt, but it certainly plays a significant role. This was evidenced in part by felled timber in the concession area waiting to be transported to the company's 2007-built wood processing and furniture crafting factory 20 km down the road just west of Saysettha capital (see *Photograph 3* below)



*Photograph 3: Timber in the concession area to be transported*

Despite the unofficial source, the land rental rate of \$30 per ha is likely accurate considering land leasing rates were increased by a 2009 presidential statute<sup>49</sup>. This statute increased rates for rubber plantations to \$30 per ha per year in areas with undeveloped infrastructure, in comparison to previous rates of \$6 to \$8 per ha. Despite the higher rate, HAGL has in a sense received the land for free, the only requirement being that they had to loan \$15m for 50 years. The only payment they had to make was the \$4m in grant aid for the dormitories and \$30m for Attapeu. A total sum of \$34m in grant aid plus \$40m in total investment for the plantation and the two rubber factories is a small price to pay in comparison to the \$120m per year in wooden and latex products that Bàu Đức expects to export from Attapeu once production is at full capacity in 2012<sup>50</sup>.

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<sup>48</sup> The deal also included training the Lao national football team at HAGL's football training center in Gia Lai, as well as paying the salary of the team's Austrian football coach. Cf. VietnamNet Bridge 2008. HAGL built athlete's village in Laos. 15 July. VT. 2009. Austrian coach to train Lao footballers. 07 July.

<sup>49</sup> 2009. Presidential Statute No. 2 on State Land Leases and Concessions. 18 November.

<sup>50</sup> VN Business News. 2008. HAGL plans over \$100mil for projects in Laos. 25 June.



## 5. Project Description: Size, Area, and Location

Different news sources, and even different VT articles, report conflicting sizes for the HAGL concession. Some articles mention an initial 5,000 ha in Sekong and Attapeu with 10,000 ha later added in Attapeu, totaling 15,000 in both provinces. Others cite a total of 30,000<sup>51</sup>. The first confusion can be explained by a 2007 investment from the Quang Minh Company, a subsidiary of HAGL<sup>52</sup>, which is currently planting 3,000 ha in Attapeu and 2,000 in Sekong. The 30,000, however, may reflect HAGL's future investment plans, rather than currently licensed land. During interviews, HAGL representatives and government officials expressed the company's desire to double or triple the size of the plantation, particularly to find an additional 10,000 ha near the *Nam Kong* dams in Phouvong district. Confusion between the amount of land sought by the company and the amount officially licensed may indicate the blurriness between these definitions in the first place for such a high profile investor.

Despite the company's ambitious expansionary plans, by the time of our fieldwork in February 2010 only 8,078 ha had been allocated to the project<sup>53</sup>. The breakdown of this allocation into three different fields in Saysettha, Sanxay, and Phouvong districts, can be seen in *Table 1*<sup>54</sup> on page 19. Additionally, the location of all three fields can also be seen on page 19 in *Map 2*<sup>55</sup>. For reference, a general map of Attapeu province can be seen on the following page in *Map 1*.

The first and largest of the three fields is located in Saysettha district, approximately 31 km east of Attapeu provincial capital. The bottom edge of the field borders the 2006-completed route 18B to Vietnam, making it the most accessible and visible of the three fields. The company's headquarters are also located at the bottom edge of the first field. Villages that lost land to this section of the plantation include *Ban Hatxane*, *Ban Kengnyai*, *Ban Mai*, and *Ban Datkoun*. The second and second largest field also lies in Saysettha district, its southern border running along the Xesou river. At the time of the August 2009 survey report, none of the land in the second field had been cleared, but clearing had begun by the time we arrived. Impacted villages include *Ban Hatxane* and *Ban Nyai Oudom*<sup>56</sup>. This field is being connected to route 18B by a new road being constructed northeast through the concession area, leading directly to the first field. The third and smallest field, located in Phouvong district, has impacted *Ban Khamvongsa*<sup>57</sup> and *Ban Kang*. The northeast corner almost touches the Xesou

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<sup>51</sup> VN Business News. 2008. HAGL plans over \$100mil for projects in Laos. 25 June.

Vietnam News Service (VNS). 2010. HAGL Chairman unveils regional expansion plans. 14 May.

<sup>52</sup> 2009. List of plantation investments in Attapeu province. Attapeu PLMA.

<sup>53</sup> 2009. Report Booklet Checking Environmental and Social Assessment and Re-checking Area Cleared by Hoang Anh Attapeu Co. Assembled by Attapeu PLMA.

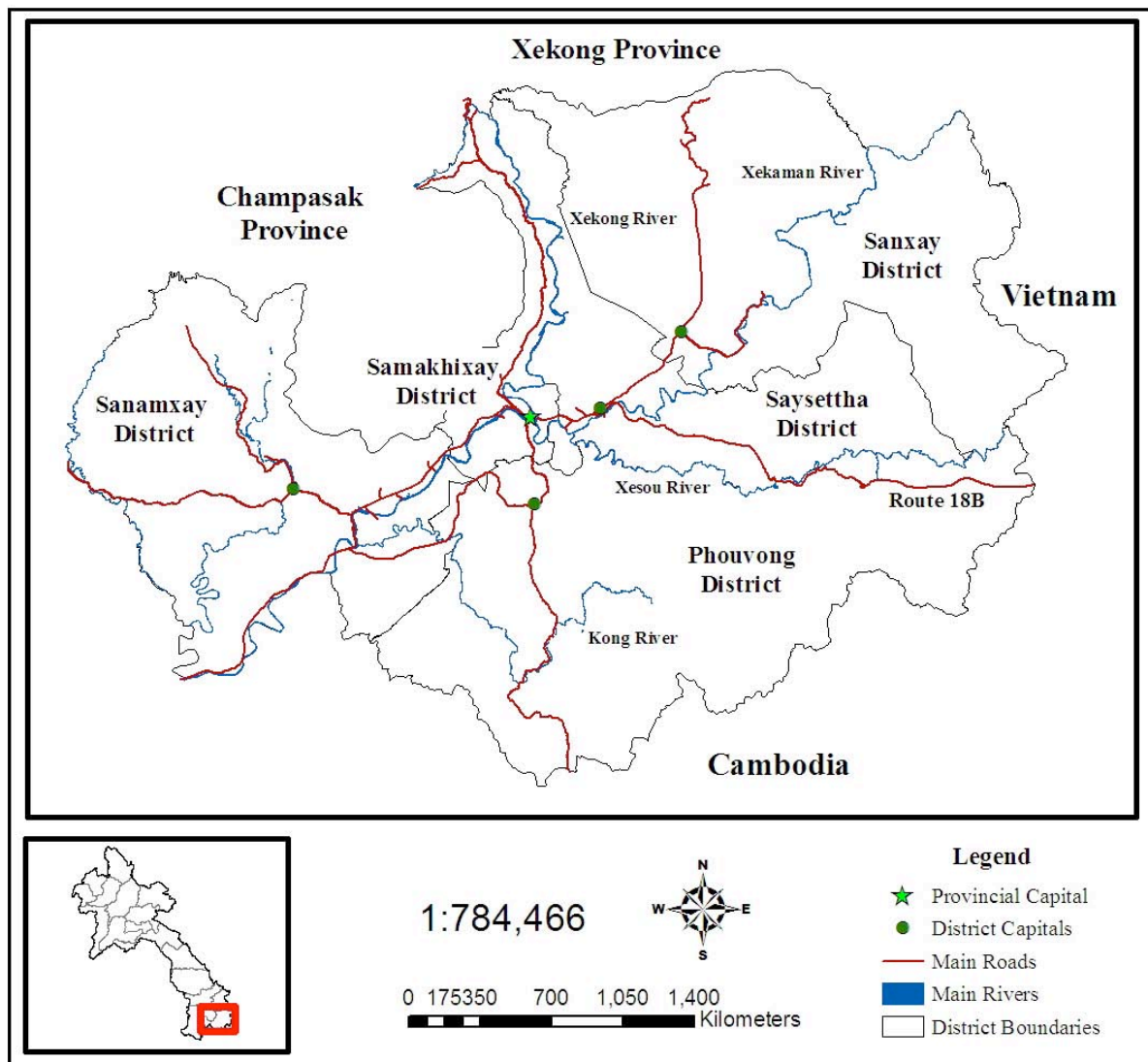
<sup>54</sup> 2009. Attapeu Provincial Government Survey Report. 19 August.

<sup>55</sup> *Map 1* was created using a variety of data sources. The field borders came from a company map made in August 2009. The numerical order of the fields was designated by the company in the map, and thus replicated in this paper. The village points and roads came from GPS data recorded in the field. The district borders and river shapefiles came from a stock database with GIS shapefiles of Laos.

<sup>56</sup> *Ban Nyai Oudom* is a recent consolidation of three older villages: *Ban Done Nyeuh*, *Keng Makkeuah*, and *Boung Wai*. These sub-villages are now called *koum* (units)

<sup>57</sup> *Ban Khamvongsa* was also recently consolidated from *Ban Naseuak* and *Ban Houay Kout*.

river<sup>58</sup>, while the rest of the field is oriented southwest from the river. The Xesou river bridge was built specifically to connect this field to route 18B.

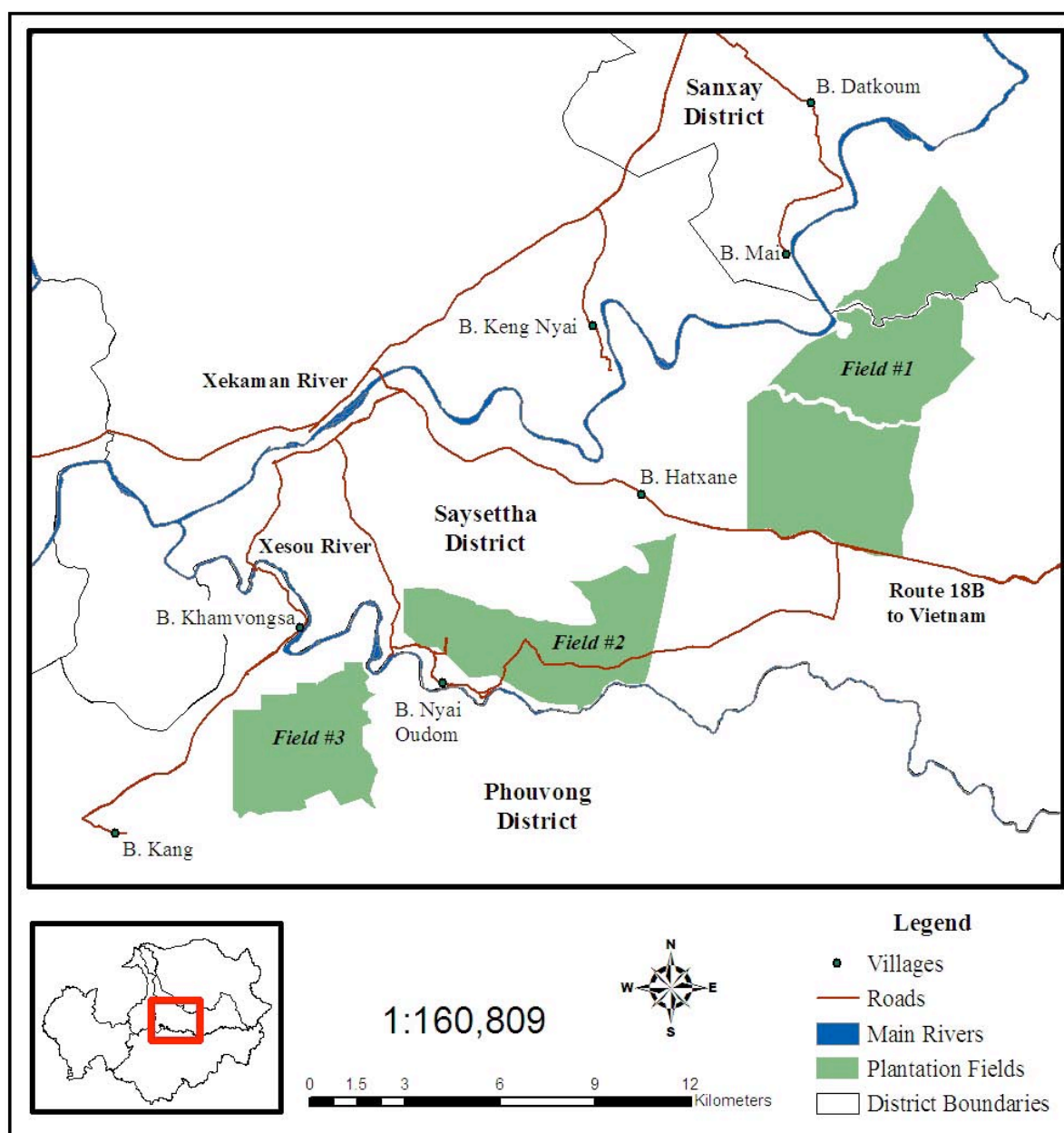


*Map 1: Attapeu Province*

<sup>58</sup> Using GPS coordinates it was found that at many points the edge of the rubber field was less than 100 meters from the river. This is illegal by the Forestry Law of 2008 as such land can only be Protection Forest to protect the river's watershed.

Field number	District(s)	Total area (ha)	Area planted (ha)	Area cleared (ha)	Area not yet cleared (ha)
1	Saysettha, Sanxay	4,419	2,264	1,645	510
2	Saysettha	2,100	0	0	2,100
3	Phouvong	1,559	954	360	245
	<b>Total:</b>	<b>8,078</b>	<b>3,218</b>	<b>2,005</b>	<b>2,855</b>

*Table 1: Plantation size break-down*



*Map 2: Location of plantation fields*

An interesting question regarding plantation concessions concerns their location. Mining, hydropower, and tourism all have very specific locational requirements that limit the choice of land to be conceded. Plantations can be developed on many different land types, but arable, low-lying land is ideal. Although only 4.01% of the country's land is categorized as arable, there is still a considerable amount of locational choice from such 9,708.8 square kilometers (km<sup>2</sup>)<sup>59</sup>. The allocated land borders the western edge of a somewhat triangular expanse of flat, lowland area located between the surrounding upland areas of the Bolaven Plateau to the west, much of Sanxay district to the north, the eastern portion of Saysettha and Phouvong districts, the southern portion of Phouvong district, and most of Sanamxay district to the southwest. Such lowland area is defined by the provincial government as between 78 and 300 meters above sea level<sup>60</sup> and spans all of the districts in the province, yet is mostly in Saysettha. This lowland area comprises 2,220 km<sup>2</sup> or 27% of the total land area in the province<sup>61</sup>.

This lowland area also holds the greatest concentration of dry dipterocarp forest in the province (see inset of *Map 3*<sup>62</sup> on the following page)<sup>63</sup>. The government finds such land appealing for plantation allocation because they view it as low quality forest, despite its importance as a source of forest products for villagers. Such land suits the government's strategy of conceding 'degraded' or 'barren' land. *Map 3* shows the location of the plantation fields in relation to previous land use and forest categories. The map inset shows that the allocated area lies on the western edge of an expanse of dry dipterocarp forest where a transition begins to mixed deciduous, deciduous, and dry evergreen forest types, and eventually to the Dong Amphan NBCA at the eastern edge of the province. The map also shows that land types not classified as degraded or barren, such as mixed deciduous forest and paddy land, were conceded. This is possibly because a comprehensive land survey was not conducted until two years after the plantation's implementation. The selection of Attapeu for this plantation is likely because it is the closest province in Laos to HAGL's headquarters in Gia Lai province, Vietnam. Additionally, Attapeu has become increasingly connected with Vietnam since the completion of route 18B.

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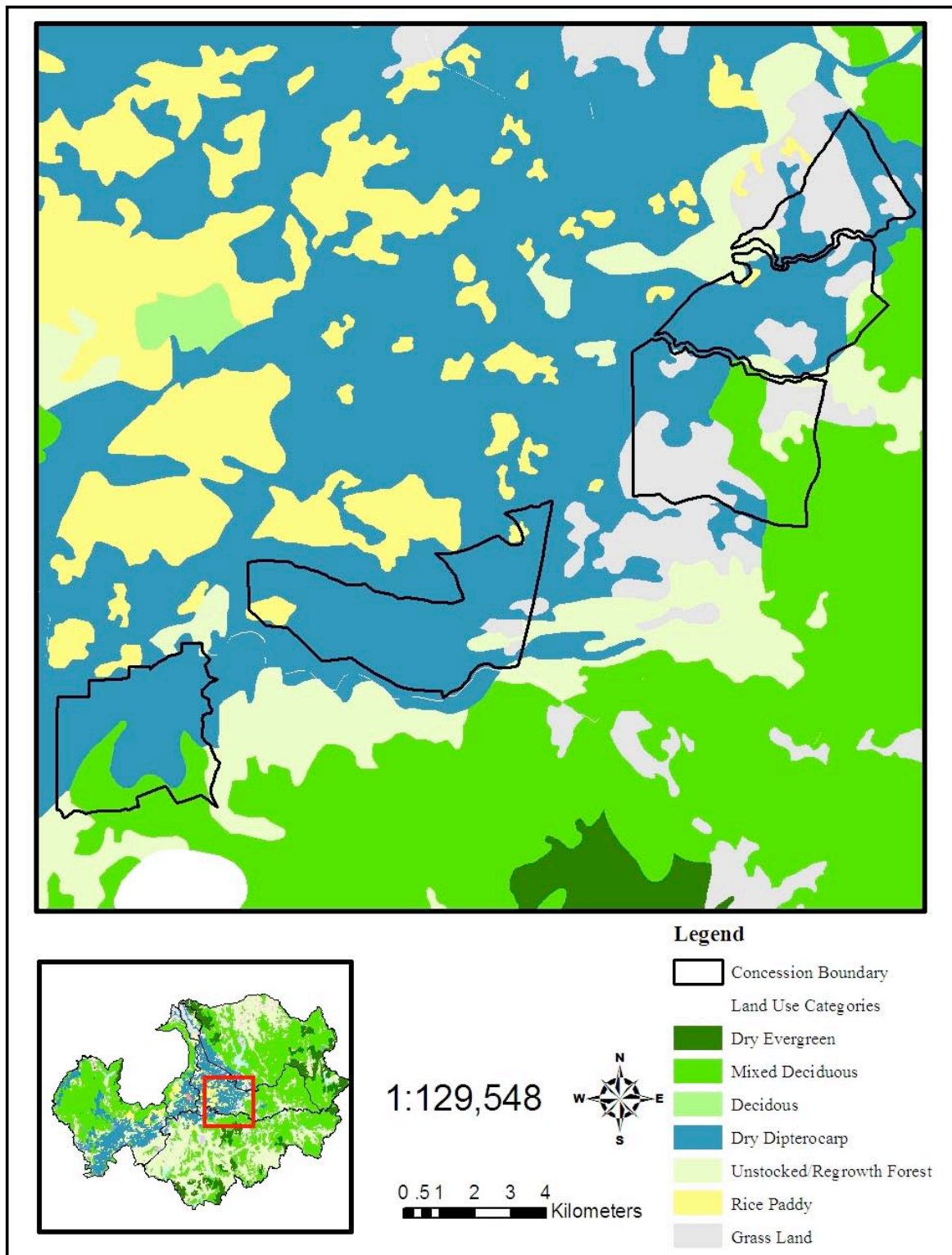
<sup>59</sup> 2010. Laos. *CIA World Factbook*. <<https://www.cia.gov/library/publications/the-world-factbook/geos/la.html>>. The country's total land area is 236,800 km<sup>2</sup>

<sup>60</sup> 2009. Development Plan of Attapeu Province in Joining the Development Triangle. Attapeu DPI.

<sup>61</sup> Ibid.

<sup>62</sup> The land use and forest category data used in this map comes from a 2002 map made by DOF of MAF. It is likely that agricultural lands have greatly expanded since then, especially because since the International Fund for Agricultural Development (IFAD) has been implementing paddy land expansion projects in many of the impacted villages since 2002.

<sup>63</sup> *pa khok*



*Map 3: Location of concession in relation to 2002 land use categories*

## 6. Implementation

The project investment contract provides a number of clauses intended to reduce the concession's environmental and social impacts. However, as is often the case in countries with loose regulatory environments, such legal requirements are ignored during the process of implementation, and thus implementation becomes the most important phase for the application of environmental and social safeguards. It is during this time period, from the moment the contract is drafted to when the trees are planted, that the details of the project, and thus its actual impacts, are reified. Therefore, this section examines the implementation of the concession in order to see (1) the process by which the project was carried out and thus why village land and livelihoods were not protected, (2) how villages and households were influenced to concede their land, and (3) the manner in which both villages and households have resisted the project.

### *6.1 Governmental Facilitation*

Although 10,000 ha of contracted land had yet to be allocated by the time of the fieldwork<sup>64</sup>, the company has developed the acquired land at a rapid pace. Between May 2007 and August 2009, 5,318 ha of rubber had been planted with rubber and 2,005 ha of land had been cleared, while 2,885 ha remained untouched. Such rapid implementation could not have occurred without the utmost cooperation and support all levels of the government. From the beginning, the project was a national priority due to the investor's financial support of the SEA Games. Both official documents and government interviews showed that the central government wished to implement the project quickly in order to satisfy an important investor and donor.

Additionally, it seems that the company was given a great deal of freedom during the implementation stage. This can first be exemplified by the ease with which HAGL has cleared land outside of the agreed-upon boundaries at a point in time when it has yet to clear all of the land within such boundaries. The 2009 survey report acknowledged that 33 ha outside of the boundaries had been cleared. However, when making a conservative estimate using GPS coordinates recorded in that section of the field, I found that at least 159 ha had been over-cleared<sup>65</sup>. Moreover, these boundaries were actually mapped out by the company, further showing the degree of freedom which they have had to survey and decide upon which land to develop.

Another indicator of the plantation's rapid implementation was the lack of comprehensive land survey and any type of ESIA until after the project had been implemented for two years already. Although provincial offices accompanied HAGL to conduct the initial land survey, this activity mostly consisted of showing the company which areas could be chosen for development. It was not until after the land had been mostly cleared that maps demarcating the extent of the plantation fields were made by the company. No ESIA was conducted before project implementation. The 2009 survey report only includes a few comments on

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<sup>64</sup> According to the survey maps created by the company in August 2009, they had only found 8,078 ha of suitable land. Originally, they had accepted a 1,564 ha field in Samakhixay district, close to the provincial capital. According to a PLMA official, however, the company changed its mind due to the poor quality of the soil on that plot of land and its distance from the other fields.

<sup>65</sup> It should be noted that we did not record GPS points throughout the whole area since we did not know at the time that it was outside of the contracted boundaries. This is why the actual cleared area could be larger than 159 ha.



environmental and social impacts, which do not by any means amount to a formal ESIA. The positive economic, social, and environmental impacts noted in the report are that (1) villagers in the concession area will have employment and increased incomes, (2) revenue to the provincial and central government will increase, and (3) the agricultural land cleared in four of the villages was compensated. The negative impacts are that (1) villagers who have traditionally profited from forest use had lost income, (2) animal grazing areas had been limited, (3) animals and fish had died, (4) the company had cleared land outside of agreed-upon boundaries, and (5) the company had destroyed many streams. The head of the provincial WREA office admitted that a full ESIA had not been conducted because “the procedure had not been followed perfectly”, but that “it is not a big problem” because environmental and social impacts were taken into consideration during implementation.

The post-facto land survey and evaluation of environmental and social impacts also helps to explain why prohibited land use types were cleared by the company. As the report mentions, numerous families lost agricultural land, including almost every type, such as swidden, permanent garden rice, garden crop, industrial tree, booked, and paddy land. The loss of communal land-use types were also referred to in the report, although not detailed. These land use types include animal grazing land, production forest, using forest, protection forest, and conservation forest. Despite the clearing of most agricultural and communal land types, the contract clearly stipulates that most of these land use types are prohibited to be conceded. The first article of the contract states that the only area permitted for development is degraded forest or barren land. It continues to state that prohibited land categories include conservation forest, watershed areas, production forest, and protection forest. Additionally, it notes that the project cannot be developed on land that belongs to people or land that people have the right to use<sup>66</sup>.

The fact that such a massive concession was handed down to the Attapeu government and they were pushed to implement it quickly may have led to resentment at the provincial level. During interviews, officials at PLMA and WREA offices expressed concern over the project and the desire to conduct the ESIA that had not occurred. As important, provincial and district officials were receptive to our work on such a sensitive issue. The fact that we were allowed to copy the investment contract and survey report says a lot about the sentiment provincial authorities have toward the project. This may partly be because this was not a concession they arranged. The land comes from their province, their forests, and their constituents, yet they did not receive the accompanying kickbacks if they had been the ones to sign the original contract.

## 6.2 Consultation and Negotiation

At the village level, HAGL representatives used a variety of different strategies to ensure that village leadership would comply with the concession. Out of the seven impacted villages, only four were warned beforehand about the concession, while the rest found out as their land was cleared. For the four told in advance, their stories show the type of pressure they faced to accept the concession. In the case of *Ban Nyai Oudom*, when government officials came to

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<sup>66</sup> 2008. Investment Contract. Article 1.5: “ເຂດໂຄງການ” ໝາຍເຖິງເນື້ອທີ່ ທີ່ລັດຖະບານອະນຸຍາດໃຫ້ຊຶ່ງປະກອບດ້ວຍ: ເນື້ອທີ່ປ່າຊຸດໂຊມ, ຫຼື ທີ່ດິນປອກຫຼົ້ນ ຊຶ່ງບໍ່ແມ່ນເນື້ອທີ່ດິນເປັນປ່າສະຫງວນ, ຕົ້ນນ້ຳ, ປ່າດົງດິບ, ປ່າຜະລິດ, ປ່າປ້ອງກັນ ແລະ ບໍ່ແມ່ນກຳມະສິດຂອງປະຊາຊົນ ຫຼື ດິນທີ່ປະຊາຊົນມີກຳມະສິດນຳໃຊ້.

the village to discuss the prospect of the plantation with village leaders, they were told that the provincial government had already agreed to give the company the 2,100 ha in that area. Village leaders felt that they had no choice since the decisions were already made at higher levels of government. At *Ban Hatxane*, the *nai ban* told us that the only consultation process to occur was that a Lao representative of the company called and met with the *nai ban* to tell him their land would be appropriated as allowed in the signed contract. As the *nai ban* put it, “if the central government agrees, the province agrees, and the district agrees, how can a small village disagree?”.

Along with force and pressure, the company used various incentives to ensure the successful acquisition of land. The most common was the positive terms in which they described how the plantation would improve village development. In short, it would turn the villagers from poor and backwards to wealthy and modern. Company representatives, as well as government officials, often used the line that the village has been using the land for many years yet remain poor. Thus, if they were to allow the company to use the land more productively they could finally escape their poverty. In addition, a very positive picture was painted of the village improvement that would accompany the new roads, electric lines, schools, and health clinics to be built by the company as well as the gainful, high-paid, and consistent employment on the plantation.

HAGL also used material incentives to influence the decisions of certain village leaders, as well as government officials. The head of *Koum Keng Makkeuah* in *Ban Nyai Oudom* proudly showed us photos of a plantation study tour to Vietnam that the company took him on to see the success of the company’s previous plantations and the benefits they have brought for plantation workers. On this trip, the company also brought along the head of *Koum Done Nyeuh*, the *nai ban* of *Ban Hatxane*, Saysettha DAFO officials, Attapeu PAFO officials, and Women’s Union leaders from Saysettha and Phouvong districts. The study tour, which was fully paid for by the company, included overnights at HAGL’s 5-star hotels in Pleiku (Gia Lai province) and Dalat, daily spending allowances, and a day trip to a beach resort in Nha Trang.

The promised electric lines, new roads, houses, schools, health clinics, and village offices are obvious material incentives influencing village opinion concerning the plantation. There also seemed to be other incentives to key individuals, although clearly more difficult to track down. The survey report, however, mentions that on top of all of the infrastructural improvements to be made in *Ban Nyai Oudom*, the village will receive five motorbikes, with no explanation as to why or to who will receive them. There were also rumors in one of the seven villages that the *nai ban* had received money directly from the company to build a new house for his family

Similar tactics were used at the household level to ensure that individually tenured agricultural plots were given up without resistance. As with the acquisition of village land, households were sometimes told beforehand that their land would be cleared while other times they would not find out until after clearing. If households were told beforehand it was either because they were working on their land at the time of clearing or that during the clearing process the company could see could see land with high value produce, such as teak trees or paddy rice. Otherwise, households would have to contact the company after their land had been cleared in order to get compensation. For more on the compensation process see section 7.2.



### 6.3 Resistance

When examining the company's land acquisition strategies, it is unsurprising that most villages allowed the concession of their land. However, there were a few instances of village- and household-level resistance to conceding land. For most households, the threat given by the company that they could lose their land without compensation was daunting enough for them to accept compensation at a price lower than the worth of their land. However, there were a few households that resisted giving up their land and their stories are worth telling as they demonstrate that even among marginalized and politically disadvantaged groups, land is a socially contested resource. Throughout the three focus villages, only two households resisted giving up land, both in *Ban Keng Nyai*. This may be because out of the three focus villages, *Ban Keng Nyai* was the only village where paddy land was lost<sup>67</sup>.

Both acts of resistance arose due to disagreements over the rate of compensation, although such disagreements were likely also provoked by the way in which the company cleared their land and handled the compensation process. The first household lost five hectares of booked land<sup>68</sup>. This household had planned to use such land for paddy production, one hectare of which had been prepared already for the coming growing season, all of which they had a temporary land use certificate for. After their land had been cleared without warning, the head of the household expressed his grievances to the company, telling them that "we are poor already and we need that land for our lives, for without it we will not have any rice to eat". He was offered 3.75m kip in compensation but was appalled at such a low price and said that he would only give up the land if awarded 30m kip. He also told them that if he did not receive the requested amount he would continue to cultivate his land and if the company planted rubber trees on his land he would pull them all out. The company still refused and at the time of the interview the household was waiting to hear if they would receive a higher compensation rate.

The second household was also not warned before the company cleared one hectare of permanent garden rice and 5.5 ha of booked land that had been prepared for paddy production. After clearing the land, they set fire to the remaining brush and by accident the household's field house<sup>69</sup> caught fire and burned down. The household went with the *nai ban* directly to the company to ask for 25m kip of compensation for the land and 5m kip for the house. They agreed to the price of the house, but only to 15m kip for the land, warning that if the household did not accept the price for the land they would not be able to get the money for the house. The head of the household refused and told the company that if they did not give the full amount by June he would start to plant rice anyways and rip out any rubber trees in his way.

At the village level, one village successfully opposed the appropriation of their land while another went against the expansionary plans of the company after initially accepting the company's demands. The *nai ban* of *Ban Hatxane* initially agreed to give away land to the company due to pressure from the company and government as well as the hopeful prospects of village development and employment opportunities for villagers. However, he quickly

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<sup>68</sup> *din chap chong*

<sup>69</sup> A field, garden, or paddy house is a second, smaller house that many farmers build near their fields as a place to eat and relax during the day as well as to sleep during labor intensive periods of the growing season.

became disillusioned when the company did not connect the electric lines that were already running along the main road to individual houses and no new schools or houses had yet to be built. This especially hit home considering almost all of the houses in the village had been destroyed during the September 2009 flood from Typhoon Ketsana and many villagers were living in makeshift houses built after the flood (see *Photograph 4* below). Additionally, almost all villagers were dissatisfied with the employment due to the strenuous nature of the work, the long hours, and the low pay (see section 8.3 for more). So, when the company came to the *nai ban* at the end of 2009 requesting another 450 ha to build 400 houses for plantation workers the *nai ban* denied the request. The *nai ban* especially disagreed with the proposal because the company had previously promised that the 450 ha would not be taken because it is productive agricultural land. Additionally, the *nai ban* told us that the government wanted to destroy the land use certificates that villagers have for this land so that they do not have to be compensated. The contract for the land had already been signed at the district level and the company told the *nai ban* that they would get it approved at the provincial level and then he would not be able to do anything about it. This approval process was still occurring during our work in *Ban Hatxane* and during an informal conversation with the *nai ban*, a Lao employee of the company who is also fluent in Vietnamese and who has the job of negotiating with villages called the *nai ban* to discuss the deal. The *nai ban*'s frustration was apparent as he put the company representative on speakerphone to allow us to listen in on their conversation. After the *nai ban* refused to accept the proposal once again, the Lao representative angrily asked "are you bold enough to stop us?". Although the situation was uncertain at the time, as we were finishing the fieldwork, the area that was intended for this development was beginning to be cleared.



*Photograph 4: Post-Ketsana makeshift housing*

*Ban Kang* of Phouvong district, however, was more successful than *Ban Hatxane* when the company came to clear land in 2008. First, the company came with DAFO to request the

right to survey land in the village for the concession. Immediately, the *nai ban* did not allow any surveying and so the survey team went to *Ban Naseuak*<sup>70</sup>, on the northern border of *Ban Kang*, whose village leaders allowed the surveying to take place. After the team had finished surveying land in *Ban Naseuak* they continued surveying across the border into *Ban Kang* and marked off land within *Ban Kang* to be part of the plantation. Villagers reported this to the *nai ban* who then took it up with DAFO asking them why they did not discuss the issue with him first before allocating his land to the concession. At the *nai ban*'s request, the company and DAFO officials came to the village to ask the *nai ban* if they could appropriate 260 ha of the village land but the *nai ban* disagreed again. Company representatives later came independently to ask again for the land, but this time for 25 ha, and once again the *nai ban* disagreed. However, around harvesting time in December 2009, the company began to clear village land without permission from the *nai ban*. When villagers saw this and reported it, the *nai ban* immediately went with village police officials to confront the workers who then left. Two or three days later, though, they came back to continue clearing the land, which prompted the *nai ban* to return with the village police, and this time requested 20m kip in fines. After a bit of negotiation, a fine of 3m kip was agreed upon for the 6 ha they had cleared.

The *nai ban* of *Ban Kang* gave two reasons for his resistance. The first was that he did not want natural and forested land to be lost due to the dependence of village livelihoods on such land for survival. The second was they had heard about the negative impacts of plantation development from ethnic Brao relatives in Bachieng District of Champasak province who had already lost much of their land in the same way. The other reasons he cited were that he did not want the village to lose grazing land since animal rearing makes up a big portion of their livelihood, and he also wanted to conserve trees for building houses in the future. It is impressive that the village leadership had the strength to go against a development every other village felt powerless against. This is exemplified in a conversation that the *nai ban* recalled for us between him and the Lao company representative, during which the representative tried to convince the *nai ban* by saying that if they gave up their land they would become "rich like us, with cars and airplanes" and if they did not they would remain poor. In response, the *nai ban* told the representative that giving up their land would be akin to killing themselves. Yet the representative continued by promising that "we will give you anything you want. If you want a motorbike we will give you a motorbike, if it's money you want we will give you money, if it's a house then you can have that too". The *nai ban* replied by saying that his village did not need any of things, that paddy land and buffalos are enough.

A few points can be drawn out from these cases of resistance, the first being that village leaders and households *can* have a say over development projects that affect their livelihoods, even ones that are not intended to be participatory. However, this is easier said than done and there were defining aspects that led *Ban Kang* to oppose the plantation and to do so successfully. The first is that they knew in advance of the negative impacts that can come from concessionary land development. Second, they knew to some degree their legal rights and the proper way in which such developments ought to proceed, especially in relation to consulting village leaders first. Third, the *nai ban* always consulted the whole village first before making any decisions. Therefore, the village stood together as one rather than individual households or a few village leaders opposing higher-level decisions. Fourth, they used this knowledge to act quickly and decisively without giving the government or the

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<sup>70</sup> At that time, *Ban Naseuak* was an independent village, but is now *Koum Naseuak* as it is a part of the consolidated *Ban Khamvongsa*.

company any room to carry out the project without village consent. The question, then, is how can this successful story be replicated in other villages throughout the country, which will be addressed in section 9.3.

## 7. Land Tenure Insecurity: Loss and Compensation

The question of land ownership in Laos is difficult to answer due to a lack of clarity concerning who the land ultimately belongs to. It can be said that all land technically belongs to the state, yet land reform and allocation particularly through the Land and Forest Allocation (LFA)<sup>71</sup> program that started in 1996 has led to limited reforms of land use rights and ownership over land by individuals and villages. The question of land ownership, however, is less relevant than the question of land use rights that rural Lao citizens have over different land categories. Even more important, perhaps, is the degree to which these rights are protected, and how these rights are compensated when they are lost. Although the *de jure* system of land tenure in Laos is far from perfect, many reforms have been made to improve the rights that farmers have over the land they use. What matters, though, is how the legal system of land tenure plays out in reality. Land concessions provide an insightful window into the *de facto* system of land tenure in Laos as they test the strength of the legal system for protecting village land use rights. This section examines the different land use types conceded to the plantation and how they were compensated in an attempt to better understand the reality of land tenure in Laos.

### 7.1 Loss

Map 4, on page 30, shows the centers and boundaries of the five villages for which land use and border maps were acquired<sup>72</sup> with the concession boundaries overlaid on top, showing that the land allocated for the first and second fields comes from within the borders of village land. The exact amount and percentage lost by each village can be seen in Table 2<sup>73</sup> on the following page.

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<sup>71</sup> *mope din mope pa*

<sup>72</sup> Map 4, like Maps 2 and 3, was created using a combination of data sources. The plantation borders come from a company map. The village borders mostly come from GIS shapefiles created and generously shared by Mr. Khamdeng Omenavong of GTZ RDMA in Attapeu, who had created the maps in consultation with village leadership who drew borders onto a 1:100,000 topographic map from the Lao National Geographic Service. Mr. Khamdeng then georeferenced and digitized them into GIS. I then made some slight corrections using georeferenced LFA maps, when they allowed for greater accuracy. *Ban Khamvongsa* and *Ban Kang* are not included because Mr. Khamdeng had not yet created the borders for those villages and there was no LFA map for *Ban Khamvongsa*. While there is a lot of room for error, from this method, the village borders are somewhat accurate to the way in which land was allocated during the LFA process and the total amounts of village land are relatively close to the LFA land size data.

<sup>73</sup> Land loss was calculated using the GIS maps seen in Map 4. It is for this reason that there is no data for *Ban Khamvongsa*. The data concerning land loss for *Ban Kang* comes from interviewing the *nai ban*.

District	Village Name	Total Land Area (ha)	Amount of Conceded Land (ha)	Remaining Land (ha)	Percentage of Land Conceded
Saysettha	Hatxane	16,047	1,786.43	14,260.57	11.13
	Keng Nyai	5,710.75	1,597.93	4,112.82	27.98
	Nyai Oudom	3,523.92	1,800.83	1,723.09	48.9
Sanxay	Mai	4,500	804.44	3,695.56	17.88
	Datkoum	3,667.50	243.15	3,424.35	6.63
Phouvong	Khamvongsa	15,000	n/a	n/a	n/a
	Kang	2,421	6	2,415	0.25

Table 2: Village Land Loss

The amount of village land conceded to the company, however, is not the most important issue. In Laos it can be said that at the lowest administrative level, all land in the country can be divided into village boundaries. Therefore, even when land is categorized as state-owned by the government it still comes from within the borders of villages. As can be seen in *Map 2*, certain portions of the plantation fields fall outside the borders of the five villages included in the map. These field sections are also located within the boundaries of other villages. However, that land is too far away from the centers of those other villages for them to use, thus their livelihoods have gone unchanged. This means that it is much more important to examine the type of land lost and how that land was used, rather than the total amount and percentage of village land lost. For this reason, I also overlaid the concession boundaries for two villages in *Map 5* on page 31.

Land types lost to the concession can be categorized into communal and individual lands, at the village and household levels, respectively. Communal lands can be further divided into categories of land that by law can or cannot be used in some way by villagers. Conservation<sup>74</sup> and protection forests<sup>75</sup> are examples of communal land types that cannot be used. Usable land types include production forest<sup>76</sup> (can be converted to agricultural land in the future), utilization forest<sup>77</sup> (used for gathering forest products), and grazing land<sup>78</sup> (raising livestock). At the household level there are different types of land for which farmers can acquire temporary and permanent land titles, including paddy, or wet rice land<sup>79</sup>, garden land<sup>80</sup>, and booked land. The use of land for swidden cultivation is difficult to classify as it is a type of land the government is trying to eradicate. Therefore, swidden agriculture often takes place in illegal, but tolerated ways. Oftentimes, swidden is classified as garden land and legally tenured as such.

<sup>74</sup> *pa sa ngouan*

<sup>75</sup> *pa pong khan*. According to the Forestry Law of 2008, protection forests are classified as those that protect watershed areas, are kept in areas significant for national security, and areas for protecting against natural disasters.

<sup>76</sup> *pa phalit*

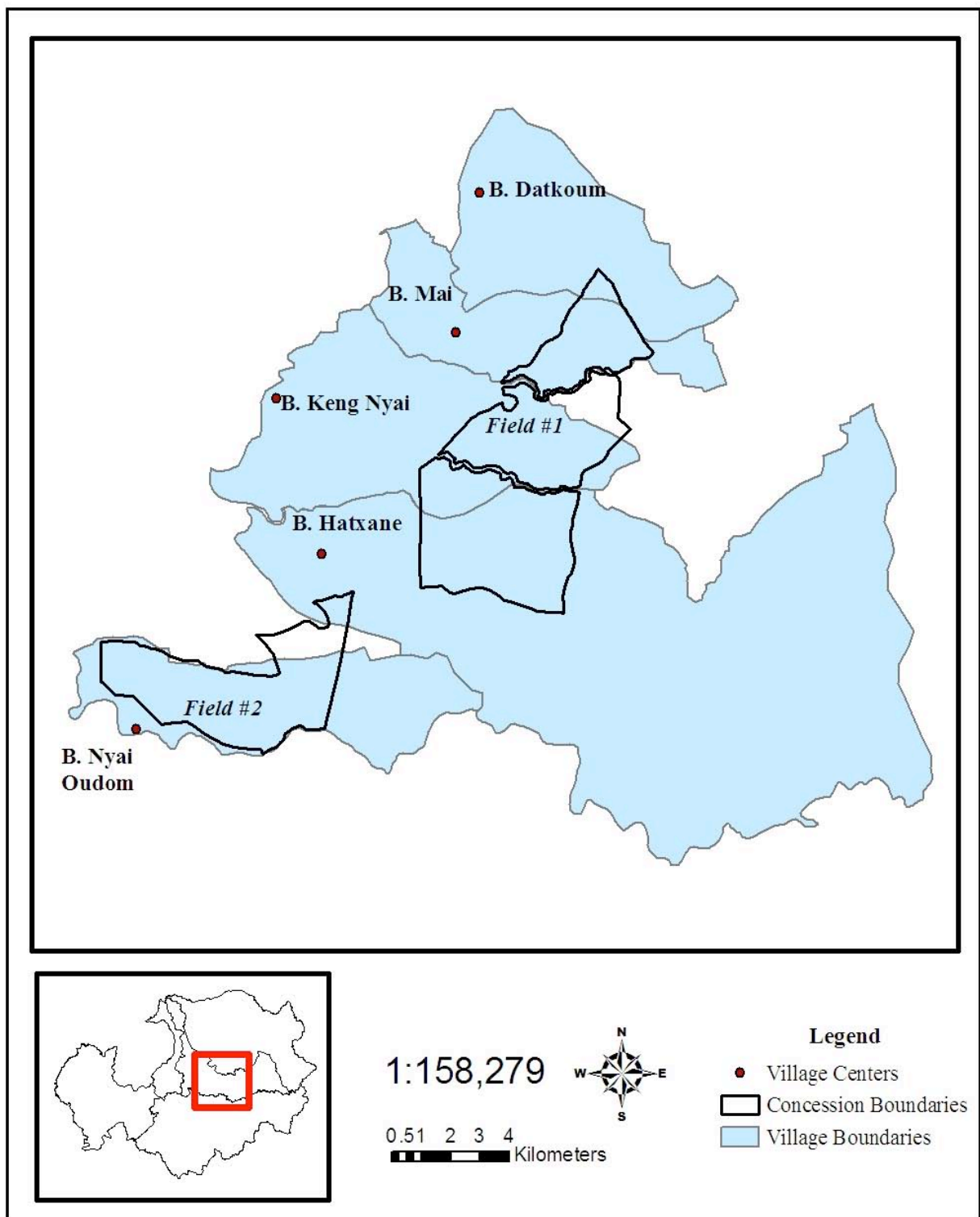
<sup>77</sup> *pa som say*

<sup>78</sup> *din liang sat*

<sup>79</sup> *din na*

<sup>80</sup> *din souan*





*Map 4: Field locations in relation to village boundaries*

To calculate the amount of LFA land use types that were appropriated, I overlaid the plantation maps onto georeferenced LFA maps for two of the three focus villages (see *Map 5* on the following page). Unfortunately, the LFA maps are not to scale and thus the data is somewhat inaccurate in *Map 5* and *Table 3*. Additionally, the land use designations often reflect how the land is *supposed* to be used rather than how it *is* used. Actual land use is often much more complex and varied than the simple polygons drawn on LFA sign boards. However, *Map 5* can still show how conflicting concessionary investments are with LFA planning. Almost all of the prohibited land use types in the project, discussed earlier in section 6.1, were conceded, exhibiting a serious breach in the contract. The fact that prohibited land use types were conceded shows that either the government chose not to follow its own regulations or that the company's surveying, mapping, and clearing activities were unregulated.

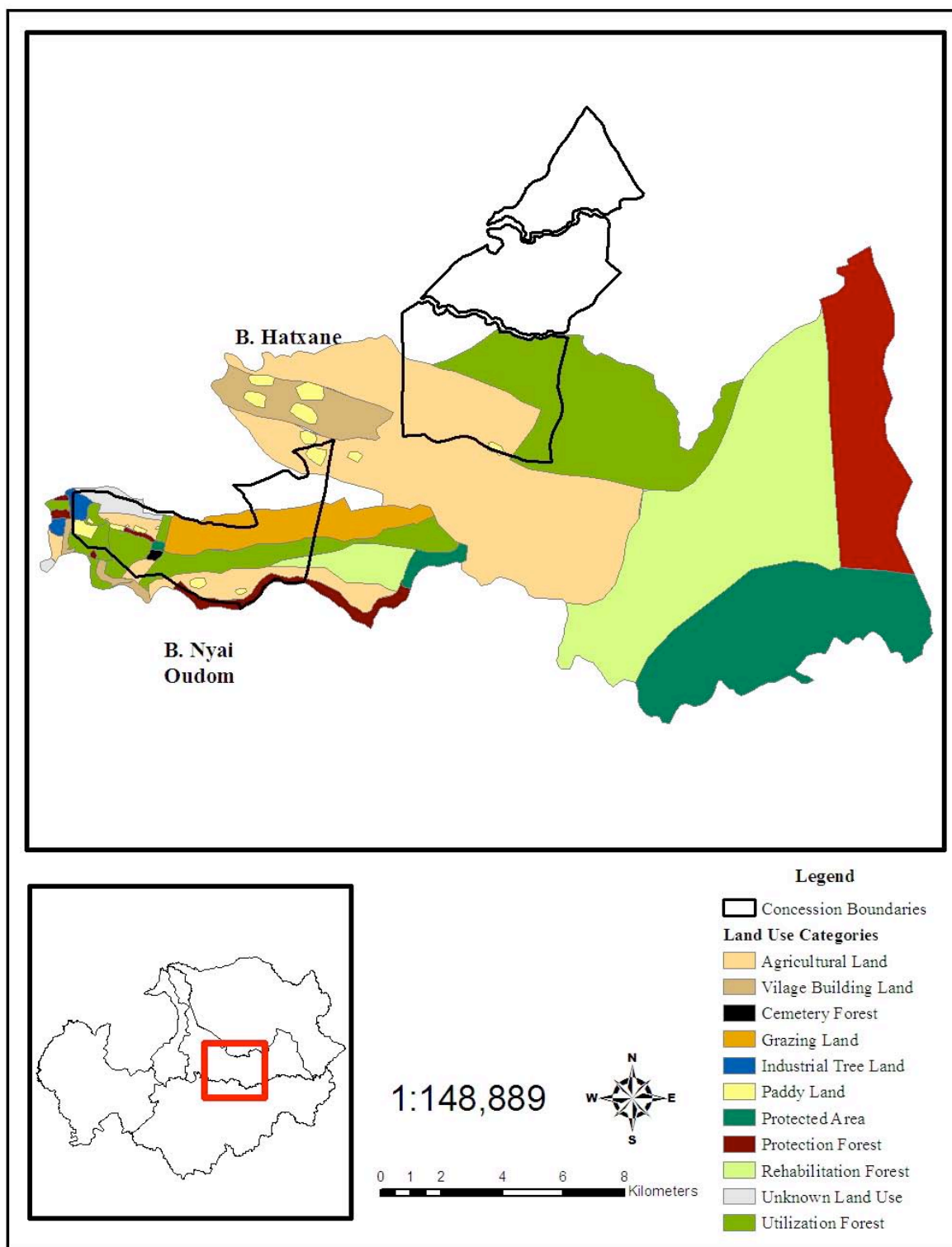
In *Table 3* below, individually tenured land types that were conceded can be seen; agricultural land, paddy land, and industrial tree land. Together, these three types of land account for approximately 41% of the total amount of land conceded from *Ban Hatxane* and *Nyai Oudom*. Communal forest land makes up for about 56% and unknown land use about 3%. It is both surprising and alarming that agricultural land makes up for such a large percentage of the land conceded due to its importance for village livelihoods.

Village	B. Hatxane	B. Nyai Oudom
<b>Agricultural Land</b>	962.3	357.06
<b>Paddy Land</b>	39.98	71.43
<b>Industrial Tree Land</b>	0	41.2
<b>Grazing Land</b>	0	496.21
<b>Rehabilitation Forest</b>	0	31.87
<b>Utilization Forest</b>	790.8	581.22
<b>Conservation Forest</b>	0	12.02
<b>Protection Forest</b>	0	88.53
<b>Cemetery Forest</b>	0	14.36
<b>Unknown Land Use</b>	0	106.69
<b>Total</b>	1793.08	1800.59

*Table 3: Amount and type of land conceded (ha)<sup>81</sup>*

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<sup>81</sup> For *Ban Nyai Oudom*, most of the land has yet to be cleared thus explaining why there has been no conflict over the loss of cemetery forest land included within the concession area. It is possible that the borders of the field could be modified to avoid clearing such sensitive land.



*Map 5: Plantation field location in relation to LFA-designated village land use*



## 7.2 Compensation

It is clear at this point that land tenure is not secure enough to prevent the loss of both non-legally tenured communal and legally tenured individual land in the face of land concessions. However, the process and value of compensation<sup>82</sup> awarded for different land types can show a lot about the degree of rights that villagers have to the land they use. Using this frame of analysis, it can be concluded that such rights are negligible for forest and other communal lands. Through the LFA process, such land has been categorized and allocated to the village for different types of use. Despite such allocation of use rights, communal lands were not compensated for when re-allocated to the company, nor are there any other reports of compensation for communal land throughout the country. This is due to the fact that there is no tenure over communal lands despite the right that villagers have to use them when the use of such lands is not being threatened. Communal lands have no land title and are considered to be within the realm of state ownership. As the head of Attapeu WREA put it, the two types of land given away were those that belong to farmers and those that belong to the state. Public or state ownership means that such lands can be easily given away without any sort of payment for the loss of resource entitlements.

Individual farming land, however, retains a higher status of legal tenure rights and tenure security, evidenced by its compensation when conceded to the company. The results from an environmental, social, and economic survey completed in August 2009 reported that in *Ban Khamvongsa* 19 families had lost agricultural land and been compensated a total of 66.2m kip while in *Ban Hatxane*, *Kengnyai*, and *Mai*, 96 families had lost land and been compensated a total of 100m kip. These numbers come from the company and according to a PLMA official they are likely an estimate<sup>83</sup>. The real numbers of households and hectares may be much higher. When interviewed in February 2010, the *nai ban* of *Ban Hatxane* reported that over 100 households just within his village had already lost land and more are losing land as the company continues to clear. Other than this survey report and informal data from the seven *nai ban*, it was nearly impossible to acquire figures on the amount of land lost by households.

*Table 4* on the following page shows the 16 households that lost agricultural land out of the 30 we interviewed. From this group, 8 of the 16 lost paddy land, 8 lost garden crop land, 5 lost booked land, and one lost swidden land, with 6 losing more than one type of land. For those that lost paddy land an average of 3.21 ha per household was lost, 1.59 ha per household for garden land, 6.3 ha for booked land, and 4 ha for the one household that lost swidden. The average of total land lost for all 16 households was 4.62 ha.

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<sup>82</sup> Government officials and villagers sometimes refer to compensation as selling land, which it is in some sense. Yet, it should be made clear that households are not selling their land voluntarily and they are certainly not receiving market prices.

<sup>83</sup> The provincial government does not have any information concerning how much has been compensated besides aggregate figures provided by the company. Additionally, when farmers are compensated they must give up their land title to the company. No copies of the land titles are made and nor are any receipts of compensation put together, either for the household or the provincial government.

Village	Household Number	Amount of Land Lost (ha)				Total
		Paddy	Garden (rice, crops, industrial trees, etc.)	Booked Land	Swidden	
Hatxane	1	0	2	0	0	2
	4	0	1.5	0	0	1.5
	9	0	0	0	4	4
	10	0	1	0	0	1
Keng Nyai	1	0	0	5	0	5
	2	0	3	4	0	7
	3	3.5	2.5	0	0	6
	4	5.5	1	0	0	6.5
	5	3.7	0	0	0	3.7
	6	4	0	0	0	4
	7	1	0	4.5	0	5.5
	8	6	0	0	0	6
	9	1	0	2	0	3
Nyai Oudom	2	0	0	16	0	16
	6	0	1	0	0	1
	10	1	0.7	0	0	1.7
<b>Average:</b>		3.21	1.59	6.3	4	4.62

*Table 4: Amount of agricultural land lost by interviewed households*

Table 5 on the following page shows the percentage of each land use type and total land lost by each household. For those that lost paddy land an average of 63.6% was lost, 84% for garden land, 96.36% for booked land, and 80% for the one household that lost swidden land. For the percentage of total land lost by households, an average of 58.5% of land was lost. While these numbers by no means statistically represent the amount and percentage of household land lost among all of the impacted villages, they do show that for households that have lost land they have on average lost significant amounts, over 50% of their total land. All of such land is vitally important for their current and future agricultural productivity, income generation, and food security.

When discussing compensation it is also important to bring up the way in which compensation is awarded, particularly the process through which compensation rates are decided. While this process does not directly shed light upon the Lao system of land tenure, its unregulated and ad hoc nature does indicate the degree of insecurity to which farmers have tenure over their land. The most alarming aspect of the process of compensation is the lack of regulation. For the most part, negotiation over compensation rates is conducted solely between the company and the farmer, and the government only becomes involved to settle conflicts or disagreements.

Village	Household Number	Percent Lost		Booked Land	Swidden	Total
		Paddy	Garden (rice, crops, industrial trees, etc.)			
Hatxane	1	0	100	0	0	50
	4	0	100	0	0	38.5
	9	0	0	0	80	66.7
	10	0	33.33	0	0	18.9
Keng Nyai	1	0	0	100	0	85.6
	2	0	75	100	0	56
	3	100	100	0	0	100
	4	73.33	100	0	0	65
	5	48.05	0	0	0	48.1
	6	66.67	0	0	0	57.1
	7	28.57	0	81.82	0	55
	8	58.82	0	0	0	53.6
	9	33.33	0	100	0	60
Nyai Oudom	2	0	0	100	0	75.5
	6	0	100	0	0	25
	10	100	63.64	0	0	81
<b>Average:</b>		63.60	84.00	96.36	80	58.5

*Table 5: Percent of agricultural land lost by interviewed households*

There are a number of different ways in which negotiation over compensation takes place. If farmers are working their fields as the company is surveying or clearing land, they will likely be warned that their land has been conceded to the plantation and a short discussion might be held over compensation rates. There were cases in our fieldwork where a compensation amount was decided upon on the spot and the money was given immediately in exchange for the land title. More common, though, is that the farmer will be told to come to the company's headquarters at the southern border of the first field to have a more formal discussion over compensation. At other times when company workers see productive land in the area of the concession while surveying or clearing land they will find the landowner to settle a compensation rate, either right then in the village or later at the company's headquarters.

During negotiations over compensation rates, company representatives will typically ask villagers how much they would like to receive for their land<sup>84</sup>. The representative will then offer a much lower rate, arguing that the requested price is too much for the size of their land and the value of the crops. There were many cases of farmers accepting the price that the company offered out of fear that they would not receive any money at all. Others were more stubborn and refused to accept the offered price. In these situations, farmers would often leave without accepting the rate and be called back multiple times until they accepted a

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<sup>84</sup> Out of the 14 interviewed households that were compensated, one was not given a chance to request a compensation price for their land

slightly increased price. For the 13 households that were given the opportunity to request a compensation price, on average they received 38% of the amount they originally requested.

By researching a concession that was not fully implemented, opportunities arose to actually observe aspects of the compensation process. During one of our trips to the first field in order to acquire GPS points and take photos of the concession, we encountered a number of households and village leaders from *Ban Datkoun* walking back to their village from the concession area. They had come to the field to meet with company representatives to measure out the extent of their cleared paddy fields to determine the rate of compensation. They were told to arrive in the morning, but were made to wait until 1pm. Although 15 to 20 households had come to have their land measured, representatives only stayed long enough to measure the land of three households and told the rest to come back the next morning. Three of the village leaders can be seen in *Photograph 5* below standing in front of their cleared paddy land. A remaining paddy house that has yet to be knocked down can be seen in the background.



*Photograph 5: Villager leaders in front of cleared paddy land*

In terms of the value of actual compensation rates, it can be difficult to evaluate their substantiality since there is little available data on the market prices of land in the area. Although it was not part of our questionnaire, five of the 14 households that were compensated told us an estimation of much they would have to pay in order to repurchase land of the same size and quality and in the same general location. On average, these five households were compensated 47% of the amount they would have to pay for new land. While a more comprehensive analysis of compensation rates in comparison to local land markets is necessary, it can still be inferred that compensation rates are far below the cost of replacing land.

## 8. Changing Livelihoods: From Land User to Land Laborer

By now, it may be obvious what kinds of livelihood changes are occurring for households in the villages impacted from this concession, especially for those familiar with the Lao context. Yet it is still important to detail the changes that households are experiencing in order to flesh out what would otherwise be a dry detailing of land loss. It is obvious that livelihoods are deeply connected to land and a loss of land means a loss of livelihood, or more concretely a loss of food and income derived from land-based activities. This section will address what these types of livelihoods are, how they are changing, and what alternatives households have as their livelihoods change.

### 8.1 Pre-concession Livelihoods

Attapeu province is often perceived as one of the more remote provinces of Laos, but like the rest of the country it has experienced a remarkable amount of change over the past centuries. The largest, or at least most memorable, changes came during the Second Indochina War. Portions of the Ho Chi Minh trail ran through eastern Attapeu making it a focal point for the United States' secret war and was bombed heavily. In the post-revolutionary period after the Pathet Lao took power and created Lao PDR, inhabitants of Attapeu, especially upland minorities, experienced massive changes due to government policy of moving upland communities to lowland areas to reduce swidden cultivation and move them closer to roads so that they can access health care, education, and markets. The appropriation of communal and private land to plantation development by way of concessionary investment is only one of many massive changes that have impacted the lives of the people in the villages discussed in this study. Thus, the concession of these villages' land ought to be seen as one of many challenges that they have experienced over time, rather than a separate and isolated incident.

Currently, all of the seven studied villages are now located in lowland areas with flat-lying agricultural land. However, most of the households within the villages are from ethnic groups that have historically lived in upland areas whose previous agricultural practices mostly consisted of swidden cultivation and forest product collection<sup>85</sup>. Most of these villages are ethnically dominated by people belonging to the Brao ethnic group with the exception of *Ban Keng Nyai*, which is mostly composed of ethnic Jeng people, a closely related group to the Brao. Most of the Brao villages also contain households of other ethnicities, including Jeng and Lao. *Ban Datkoum* is the only village to have groups from other ethnicities outside of these three, with three household of the Ye ethnic group and one Alak household. The ethnic group that makes up the majority of households in each village can be seen in *Table 6* on the following page along with other demographic village-level data.

All of the villages except for *Ban Keng Nyai* have been relocated, most for at least 25 years already. Although *Ban Hatxane* was most recently relocated in 2000, it was the second time they had been relocated after the first time in 1976. The leadership of *Ban Keng Nyai* told us that they had been in their current location for as long as anyone in the village could remember, thus they must have been living in the lowlands for longer than any of the other villages, but it was not known when they arrived or for what reason they moved. Therefore, all of the villages have been practicing lowland agriculture for many years and have been

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<sup>85</sup> In this paper I will refer to non-timber forest products (NTFPs) as forest products. This is due to the fact that timber logging for house construction within the village was found to be an important part of livelihood strategies for many poor households and thus there is no need to distinguish between forest products they collect that are timber or non-timber.



able to produce productively in comparison to villages that have been recently relocated from the uplands to lowlands.

<b>District</b>	<b>Village Name</b>	<b>Majority Ethnicity</b>	<b>Year of Village Relocation</b>	<b>Number of Households</b>	<b>Number of People</b>
Saysettha	Hatxane	Brao	2000	225	1,216
	Keng Nyai	Jeng	n/a	252	1,552
	Nyai Oudom	Brao	1976	465	2,600
Sanxay	Mai	Brao	1976	89	549
	Datkoum	Brao	1955	58	330
Phouvong	Khamvongsa	Brao	1976	202	1,084
	Kang	Brao	1984	69	386

*Table 6: Village demographics*

Despite the assimilation of these villages into lowland agricultural practices, many aspects of their previous agricultural lifestyles persist in their current livelihood strategies. For example, many households still practice a form of shifting cultivation on low-lying forest land. Some farmers practicing shifting cultivation and even have land titles to such land, which is officially classified as garden land. Such land was also described to us as garden land at first, but when the household further explained the way in which they used the land it became clear that it was some form of adapted swidden. Oftentimes this swidden land is in very small plots of one to two hectares, which are then divided into anywhere between four and eight sub-plots, depending upon the size of the total land, one of which is grown upon each year. Such fields are mostly used for rice production but other vegetables and fruits are often intercropped in intricate and complex ways. Despite being lowland, these swidden plots are often not turned into paddy fields due to the intensity of labor required to prepare land for wet rice cultivation that many poor and small households cannot afford. They may also choose to keep them as swidden due to the diversity of crops, and thus the supportive food security, that such fields can provide.

There were also agricultural production practices described as garden rice cultivation that did not seem to fit within the category of swidden cultivation. The focus of this work was not on the different agricultural systems of the village and thus it was not clear how rice could be grown productively in one plot year after year without cultivating it as wet rice. Part of this system's success may have had to do with intercropping of other garden crops. Many farmers also had small garden plots for only non-rice crops. There were also garden fields used for the cultivation of commercial crops and industrial trees. The most common of these was teak tree, a popular hardwood tree grown for commercial production throughout Laos.

Collecting forest products also makes up a large part of household livelihoods. There is a wide range of such products, but they can roughly be divided into categories of food, medicine, fuel, and construction materials. Food products include animals such as fish, frogs, crabs, birds, and rodents. They also include a wide variety of wild vegetables and bamboo. Construction materials include bamboo and timber for housing, cogongrass or (*Imperata*

*cylindrical*)<sup>86</sup> for roofing, and rattan for making household items and other handicrafts. Many households also rely on the sale of such products, both within and outside of the village, as a significant portion of their monetary income. Interviewed households were able to make anywhere between 200,000 to four million kip per year from the sale of forest products, depending upon the household. Most products were collected in forests within the village boundary while others were collected in nearby mountainous areas outside of village boundaries. Some households also collect UXOs for sale, which could in some ways be considered a forest product. There were also some households that panned for gold in the Xesou River, which may not be a forest product as well, but is collected and makes up a significant portion of some households' income.

Another important source of livelihood reliant upon communally tenured land is raising livestock for both consumption and sale. Historically, livestock has been important for sacrificing in both Brao and Jeng cultures. More recently, however, it is an important income source for many households. Chickens, ducks, and pigs can be raised on any small amount of land near a household's main house. Cows and water buffalos, however, need more room to graze and thus often graze on communal forest lands. They can also graze to some degree near paddy fields. The most important source of livelihoods, however, is wet rice, or paddy, production. Although not traditionally wet rice cultivators, most farmers in these villages rely on paddy production largely for food security, and sometimes for income.

For poorer households, selling their labor can become an important part of their more meager incomes. One form of labor was paddy land expansion and preparation. In this form, villagers are hired to help conduct the arduous task of expanding the size of wet-rice fields or helping to prepare land for paddy production. Another common form of labor was when farmers when wealthier households would hire poorer villages to log timber from the forest for constructing their house. The laborer would also be paid to prepare the timber as beams for the house and help with construction.

## 8.2 Changing Livelihoods

Due to the partially implemented status of the rubber plantation, livelihood changes are partial and incomplete. In *Ban Nyai Oudom* most of the second field has yet to be cleared and only a few households have lost land or access to forest resources so far. However, as can be seen in *Table 2* of section 7.1, 48.9% of Nyai Oudom's village land is planned to be cleared and thus livelihoods will be impacted dramatically. Nevertheless, after three years of implementation, massive changes in livelihoods have already taken place. As discussed above in section 8.1, livelihoods in these villages are directly related to land, whether by cultivation or by the collection of resources from that land. Thus, the change in livelihoods has been due to a loss of land, both communal and individual.

As a percentage of total land, more communal (mostly forest) land has been lost than individual agricultural land and thus the most wide-ranging livelihood impact from the concession results from the loss of communal land. Most importantly, this means the loss of forest products collected from such land. Additionally, it has meant the loss of land for livestock grazing. Both the collecting of forest products and the raising of livestock are now

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<sup>86</sup> *nya kha*

much more difficult tasks. Since every household within six of the seven villages<sup>87</sup> uses communal land in one way or another, 1,291 households and 7,331 people have been impacted to some degree by the concession.

The loss of forest products is a loss of both income and food security to many households. All 30 households within the three focus villages reported collecting forest products for either personal consumption or sale. The main areas for collecting these products were the forests that had either been cleared already or that were designated to be within the concession area, such as in *Ban Nyai Oudom*. Villagers know which areas will be included within the concession because the company digs a ditch around the area that will become the plantation area before clearing any of the land. The ditch is used to mark the official borders of the plantation, to keep animals out of the plantation area, and also to show villagers which land has been conceded to the company before the land is cleared (see *Photograph 6* below)



*Photograph 6: Ditch bordering concessions area. Land to be cleared is to the left.*

In *Ban Hatxane* and *Keng Nyai*, where most of the land for the plantation has been cleared already, households reported having difficulty finding the forest products they used to collect in the area that was cleared. Now, households must travel to far off upland areas to collect forest products. However, some households have reported already having a difficult time finding products in these distant areas as many households are looking for forest products there now and thus there is an increased pressure on those resources. At the same time, households have reported higher prices for forest products as they are becoming rarer in the area. This may create an even greater ecological pressure on the remaining forest products.

For a number of poorer households, especially of *Ban Nyai Oudom*, the loss of forest resources has been particularly damaging as labor for logging timber to build houses in the village was one of their main sources of income in otherwise subsistence-based lives. The income of one household we interviewed was completely dependent upon logging wood to sell within the village. Previously, they had logged wood approximately ten times per year making 4-500,000 kip each time, therefore making 4-5m kip per year. Now, even though the land in this area has only begun to be cleared, they can only find enough wood to sell two to

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<sup>87</sup> *Ban Kang* is not included as it lost only six ha of land and thus was hardly impacted.



three times per year thus only making 800,000 to 1m kip per year, or a loss of 50% of their income. Another household in the village only makes 750,000 kip per year from logging wood with the rest of their income coming from 100,000 kip per year of gold panning in the Xesou River. This year HAGL is clearing the land where he gets this wood from and thus they believe that soon they will not be able to make any money from logging wood, putting their household in a very tough position.

The loss of communal grazing land is also problematic for livelihoods. Many households reported that after the concession was implemented it was difficult to find land for their animals to graze on. Oftentimes they had to resort to keeping their buffalos and cows near their paddy fields or bringing them down to the riverside. Livestock, especially cows and buffalos, are an important source of wealth for many villagers and also can provide significant income to those who raise them for a living. A wealthier Lao villager of *Ban Hatxane* has conducted a very successful livestock raising and selling business. From 1990 until 2009 he raised and sold a total of 500 cows and 30 buffalos, making approximately 33m kip per year. However, the implementation of the concession has led to the loss of the land he used to raise these animals. Therefore, in order to continue his business as well ensure that he has secure land for his children and grandchildren, he decided to get a land concession of his own. He is now in the process of renting out 300 ha of land from the provincial government in an area nearby the rubber plantation at a price of \$3 per ha per year. It is an interesting case of how a larger, international land concession has sparked a smaller, local concession, and thus the privatization of common resource land at the local level. It also shows to what lengths one must go to acquire secure land tenure in rural areas of Laos.

Livelihood changes related to the loss of individual agricultural plots are less widespread in comparison to those related to the loss of communal lands, yet they are more acute and intense as they lead to a direct loss of agricultural production, income generation, and food security. Only certain households whose lands were unfortunately located in the concession areas have suffered from these losses. It was impossible within the scope of this study to determine how many households had lost agricultural land and how much agricultural land was lost in total due to the lack of data and the constantly changing situation. Thus it cannot be determined how many households have experienced livelihood impacts directly from agricultural land loss. As cited in section seven, the survey documents officially reported that 115 families lost land, yet this only included four of the six villages where agricultural land has and continues to be appropriated.

The loss of different types of land affects households in different ways. Certain land types, such as paddy, garden, and swidden that are used for rice production are much more important for food security than income generation. Only a few households interviewed had enough land and produce to sell and make a profit from rice cultivation. The loss of garden crops often has more of an impact upon income generation as most of their production is for sale, while it also has some impact upon food security of the growing household. Losing booking land or garden land used for long-term commercial crop or tree production has more of an impact upon the future situation of food security and income of households. The loss of industrial tree land, such as teak, does not have an immediate impact upon a household's livelihood but prevents households from increasing their income in the future. Booking land is often intended to become paddy land in the future and sometimes households plan to convert the land within the next few years, while in other circumstances a household may have booked such land in order to pass it on to their children. Either way, the loss of booking

land is as important as the loss of other currently productive lands as it impacts the future food security of a household's current and future generation.

### *8.3 Alternative Livelihoods*

As villagers lose access to productive and resource rich land, their source of income and food security quickly becomes eroded and they increasingly need to find new ways in order to provide for their families. One of these ways, which is heavily promoted as a way out of poverty by the company and the government, is through employment on the rubber plantation. While some villagers are taking advantage of this opportunity to make extra cash, many are often working for the plantation because of the losses they have incurred due to land appropriation. The income and food security of many farmers has degenerated due to a loss of productive agricultural land as well as a loss of land used for collecting forest products and raising animals. Many of them have no other option than to work on the plantation, and for the most part they only work when they absolutely need to make money. Households are transitioning from being land users to land laborers. In some cases they may be even laboring on their old land.

At this stage of plantation implementation there are a variety of different types of employment. Immediately after forest land has been cleared by the company, the smaller trees and branches need to be gathered and burned (see *Photograph 7* on the following page). Villagers are also hired to plant the trees and remove weeds between them as they grow, while the holes for planting the trees are dug automatically by machine. There is also employment on the company's seedling nursery. Such work includes placing soil and seeds within plastic buckets and watering the seedlings (see *Photograph 8* on the following page). For all employment, workers are supposed to be paid 30,000 kip per day. However, the actual payment varies greatly. If workers are deemed to be working too slow their rates can be reduced to 20,000 or 25,000 kip per day. The rate can also be reduced to this price if there are many villagers that want to work at one time.

In an interview with an HAGL representative, we were told that there were two types of work available for villages. The first was daily employment, as described in the previous paragraph, while the second was a type of exclusive employment contract. Under this contract, villages could designate specific land near their village for only members of a certain household to manage. This should not be confused with a production contract, such as those in northern Laos, where farmers get to split the profit from the rubber with the company. This is more an example of an employment contract where farmers acquire exclusive rights to work on that land and are paid monthly instead of daily. Supposedly they would earn more this way than as day-wage employees. According to the company representative, they would make 1m kip per month for the activity of removing weeds. However, this form of employment had yet to take place so it was impossible to determine how it would actually take place, but would be interesting to examine more closely in the future.



*Photograph 7: Clearing and burning brush within the concession area*



*Photograph 8: Watering rubber seedlings in the nursery*

Day-wage work, however, had already been occurring since the concession was first implemented in 2007. Typically, workers would be organized into groups of 10 to 20 people by a supervisor. This supervisor was usually a Vietnamese employee of the company, but apparently it could be anyone who wishes to organize a group of people to work in the plantation<sup>88</sup>. However, supervisors were rarely Lao and never Brao or Jeng. This group of workers would have one specific task over a certain area and usually would work for between five and ten days, being paid every five days.

Interviewees became incredibly animated when asked about the conditions of employment. When asked about how they felt to lose agricultural and forest land, households often responded with indifference due to the powerlessness of their situation. For example, one household from *Ban Nyai Oudom* said “We were poor already and now the company has taken our teak land. What can we do? What can we feel? What can we think?”. Yet when asked about the employment they began to excitedly complain about the work, often with many other villagers nearby chiming in with agreement. The biggest complaint was that the work was too difficult for such low wages. Workers leave for the plantation before the sun rises and come back when it’s setting, working the whole time with only a one hour break for lunch. Households complained that the supervisors did not treat them well, often telling them that they work too slow and scolding them for taking too long to drink water. They were particularly angry that they were not allowed to smoke tobacco while working, as smoking is common among the Brao and Jeng people.

There was also a great deal of resentment among interviewees concerning the payment process. According to a number of interviewed households, the company would pay the supervisor for all of the group members’ wages and the supervisor was then responsible for paying each worker. Since such payments are not regulated it opens up a significant space for corruption on the part of the supervisor. Sometimes the supervisor would pay late. Other times the supervisor would make up excuses for why she or he does not have the money to pay, such as saying the company did not give enough money or that she or he was not given change and thus does not have the 10,000 kip note to pay 30,000 kip and can only pay 20,000 kip. There were also cases of employees not getting paid at all.

In the end, households could likely make more money from working on the plantation full-time than growing crops in their own fields. However, the work is so demanding and unfair in the eyes of the villagers that they will only work when they have to, usually only two or three times per year. One of the village *nai ban* is convinced that the company is making the work so difficult for the villagers on purpose in order to prevent them from coming to work. This would then give the company an excuse to evade Lao labor laws requiring 90% of the labor force to be Lao, thus allowing them to import Vietnamese labor. Either way, this new form of livelihood is in no way desirable for many villagers in comparison to their previous livelihood activities.

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<sup>88</sup> There may be other barriers to accessing such an advantageous position, yet this was unclear from the research.

## 9. Ways forward

Although this work is very critical of the case study at hand, and more generally of land concessions, I ultimately intend to use this particular land concession in order to improve understanding of how to prevent negative livelihood impacts from future concessions. Inevitably land concessions will continue to be awarded, at least in the short term, as they are a key part of the government's strategy to 'turn land into capital' as well as an important source of governmental revenue. It is nearly impossible to stop concessions altogether, evidenced by the failures of the current and previous moratorium. It is more important to employ a variety of different top-down and bottom-up approaches to reduce negative social impacts. Many approaches can be taken but I will only discuss ones that have particularly resonated with me during my work. Many of these build upon the ideas and work of others. It should also be kept in mind that many of these are more applicable for plantations rather than for other forms of land concessions such as hydropower, mining, and tourism.

### *9.1 Land Use Zoning and Concession Guidelines*

Land use zoning may be the most obvious top-down approach for reducing livelihood impacts of land concessions. However, the fact that previous land use zoning through the LFA process is not paid attention to whatsoever in the face of concessions shows the ineffectiveness of such zoning and thus the point must be re-emphasized here. Despite its many problems, LFA was an important step towards improved land management in Laos. However, LFA designations of land use are ignored when concessions are granted, and especially during the implementation process. What is missing is a comprehensive set of concession guidelines that takes into consideration and coordinates in some way previous LFA land use zones. Although the contract for the HAGL plantation designated which land use types were not allowed to be conceded, it did not provide any strategy for how to ensure that this type of land was not given away.

Part of the problem is that the LFA program was largely aimed at controlling the way *villagers* use their land, rather than as a comprehensive land planning strategy. It was not intended as a way of controlling the way in which companies use land through concessions. Many times, land use data and maps were not provided to government officials so that they could plan out future land use and land investment. During our fieldwork it was impossible to find a paper or digital copy of an LFA map from a village where the sign board had washed away in the Ketsana flood. Land use zoning at the village level needs to be incorporated with district, provincial, and national zoning strategies and maps. Then, such land use maps need to be consulted before conceding land to investors. This could make it possible to implement the law in a way that prohibited land types are not conceded. Hopefully, future land allocation through the new Participatory Land Use Planning and Land Allocation (PLUPLA) program will be able to reconcile these contradictory strategies of land use in a way that protects local livelihoods.

## 9.2 Increased Land Tenure Security

It has also been recognized in many previous reports that one of the biggest problems related to land loss to concessions is the lack of land tenure security, both legal and *de facto*. Land tenure reform in Laos has come a long way towards ensuring greater land rights for farmers and rural citizens, but there is still much to be done. Increased reform is necessary in order to both broaden the extent of the rights that villagers have over different types of land as well as to deepen the strength of the rights that they already have.

One crucially important way in which rights need to be broadened is over communal land types, and none of these land types are more important than forests. Through the LFA program villagers were given rights to use certain types of forest, but they still have not gained legal tenure over such land. Without legal tenure, it is easier for such land to be appropriated and when it is, there is compensation. Forest land is incredibly important for village livelihoods and thus should be legally recognized to protect their loss and compensated when they are conceded. In terms of deepening and protecting existing rights there is also much that needs to be done. For individual agricultural land there are already many legal tenure rights, even though farmers do not have full ownership over their land. While it would be ideal for farmers to legally own their land rather than just have the right to use it, it's more important to consider how to protect the legal tenure rights they already have. One way this could be done is by making it illegal to concede agricultural land that has a land title under any circumstance. Of course the land titling program needs to continue in order to ensure that every farmer has title over his or her land.

## 9.3 Farmer Awareness Campaigns

The case of *Ban Kang*'s successful resistance to all but six ha of the rubber plantation is instructive in a number of ways. While it is possible that the *nai ban* may have influence within the government due to personal connections or a revolutionary past, what is more important is that village leadership and the village populace as a whole knew their legal rights, and they also knew what kind of impacts such a plantation could have upon their village.

Legal knowledge is an incredibly important asset for the bottom-up protection of village land use rights. From the beginning, the leadership of *Ban Kang* directly confronted the company telling them that they had no right to clear their land without getting the permission of the village first. It is not clear why this village may have had more knowledge of its rights than others, but what is important is that legal knowledge of land rights empowers villagers to stand up to abuses of such rights. A number of NGOs have and are continuing to work on legal dissemination campaigns, which are a crucial component of protecting land use rights and land tenure. There are many Lao laws that protect village use of agricultural and forest lands, but the difficulty is that they remain just laws and are not implemented. Villagers play an important role in ensuring the implementation of such laws.

The second instructive aspect of the *Ban Kang* story is that villagers already knew of the negative impacts that a rubber plantation could have on their village due to stories they heard from Brao relatives in a village in Champasak that had a negative experience. Awareness needs to be raised among farmers about both the positive and negative impacts that different types of investment into village land can have upon their lives. Oftentimes, as was the case with the implementation of the HAGL plantation, farmers are only given the positive side of the story. By the time they realize that there is another side, it's too late. There are a few



ways in which awareness can be raised. Village leadership can be taken on study tours to other villages in the area that have experienced land concessions. Also, village leadership from a number of different villages in an area where land concessions are occurring could be brought together to have an open discussion about what these changes have meant for them. Meetings could also be held within villages to initiate open discussion about what land concessions mean for village development.

#### *9.4 Improved mitigation*

As long as land concessions continue to occur it is inevitable that there will be land and resource loss and thus negative social impacts. Improved policy and increased village awareness will help, but these approaches can never fully solve the problem, especially in the short term as such strategies are unevenly implemented. Therefore, measures need to be put in place to ensure that negative impacts of concessions are mitigated. The two most important strategies of mitigation are related to compensation and employment.

The most important strategy is to improve the compensation process, which is now problematic due to its unregulated nature. Guidelines need to be set up that regulate compensation rates for different types of land for different regions of the country. For example, teak tree land would be given a higher rate due to its higher selling price. Also, land near urban areas would have higher compensation rates due to the higher commercial value of such land. Additionally, compensation rates need to be set so that farmers are given a rate of compensation that allows them to buy the same amount and quality of land in the same area. The government's role in the compensation process could be to ensure that the company is aware of the compensation rates and to check make sure they follow these rates.

Although the recommendations put forward this section do not offer comprehensive solutions to the issue of land concessions and their impacts on local livelihoods, I hope that they do offer a starting point. At the very least this study may help to illuminate the ways in which land concessions are currently being implemented in Laos and the implications they have for rural land tenure and livelihoods. By detailing concessionary investments at the ground level, this work could help to improve future strategies of dealing with land investment in order to protect and allow for the improvement of rural livelihoods in Laos.